

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----x

21-CR-80 (AMD)

UNITED STATES OF AMERICA,

Plaintiff,

United States Courthouse  
Brooklyn, New York

-against-

March 27, 2023  
9:30 a.m.

DOUGLASS MACKEY,

Defendant.

-----x

TRANSCRIPT OF CRIMINAL CAUSE FOR TRIAL  
JURY PRESENT  
BEFORE THE HONORABLE ANN M. DONNELLY  
UNITED STATES DISTRICT JUDGE  
BEFORE A JURY

APPEARANCES

For the Government: BREON S. PEACE, ESQ.  
UNITED STATES ATTORNEY  
Eastern District of New York  
271 Cadman Plaza East  
Brooklyn, New York 11201  
BY: ERIK DAVID PAULSEN, ESQ.  
F. TURNER BUFORD, ESQ.  
WILLIAM J. GULLOTTA, ESQ.  
Assistant United States Attorneys

For the Defendant: ANDREW J. FULTON, ESQ  
40 Fulton Street  
New York, New York 10038

Also Present: DOUGLASS MACKEY, DEFENDANT

Court Reporter: AVERY N. ARMSTRONG, RPR  
Phone: 718-613-2419  
Fax: 718-613-2639  
Email: Aarm.edny@gmail.com

Proceedings recorded by mechanical stenography. Transcript  
produced by computer-aided transcription.

PROCEEDING

818

1 (In open court; Jury not present.)

2 THE COURTROOM DEPUTY: All rise.

3 THE COURT: Hi. Everybody can sit down. All right.

4 I've received Mr. Frisch's letters. I think, though, let's

5 just deal with the -- let's see. I don't know what time this

6 one was sent. But it's the -- oh, there are two things.

7 There's a mistake in the transcript which says "October 25th,"

8 and it should be "October 5th."

9 Does anybody object to that?

10 MR. PAULSEN: No, Your Honor.

11 THE COURT: All right. And then the second thing is

12 number four in that letter, was a move to strike the word

13 "Muslim" from one of the exhibits.

14 And I think the Government agrees to that; is that

15 right?

16 MR. PAULSEN: We don't think there's a problem with

17 it, but we don't have an objection.

18 THE COURT: And then just Mr. Frisch is not calling

19 Special Agent Rees, and will rest this morning. And then

20 there's a summary of some of the options that we discussed in

21 connection with the motion for a mistrial. And Mr. Frisch --

22 I think we went over this already, but Mr. Frisch is not

23 calling witnesses who worked on the Clinton campaign and wants

24 to supplement his motion for a mistrial in a Rule 29 motion,

25 should there be a guilty verdict.

PROCEEDING

819

1           And Mr. Frisch is also renewing the motion as though  
2           it were made after the defense rests this morning. Anything  
3           that you want to add to any of what's in this letter?

4           MR. PAULSEN: Your Honor, only that the portion  
5           about the stipulation. There was some technical difficulties  
6           over the weekend where it appears Mr. Frisch tried to send us  
7           a draft that wasn't received. We're working on it right now,  
8           and I think we've agreed to a very short two-line stipulation.

9           THE COURT: Okay. And what is it? I mean, you  
10          agree to this two-line stipulation?

11          MR. FRISCH: I do. I mean, I still want to brief,  
12          if it's necessary, more fulsomely, my arguments, but I'm not  
13          going to -- I certainly want to take advantage of the  
14          Government's agreement to these two sentences.

15          THE COURT: Okay. All right. So anything else  
16          before we bring in the jury?

17          MR. FRISCH: There were two things: First of all, I  
18          think we need to get the stipulation printed out, so I have it  
19          in the form of an exhibit which I don't think will take more  
20          than a few minutes.

21          MR. BUFORD: We have it drafted, Your Honor. We  
22          were working on it right up until the Court came in.

23          THE COURT: All right. That's fine.

24          MR. FRISCH: But then I have some additional things  
25          to put on the record about the Court's charge.

PROCEEDING

820

1 THE COURT: So I'm just going to say, I'll listen to  
2 them of course. But I've given out basically the same version  
3 of this charge, I want to say, four times. And the reason I  
4 do it ahead of time is so that you'll let me know what the  
5 problem is. So just start -- is it going to take a long time?

6 MR. FRISCH: No.

7 THE COURT: So what page do we want to start on?

8 MR. FRISCH: Well, the first one has to do with the  
9 definition of "venue."

10 THE COURT: And the page?

11 MR. FRISCH: Hold on one second, Judge. I'm sorry.

12 So I'm not objecting to any language that's on  
13 page 17 where "venue" starts. However, because the definition  
14 of "venue" includes the waters that surround Manhattan, I  
15 would ask for an instruction what the island of Manhattan is  
16 within the Southern District of New York.

17 THE COURT: Do you have any objection to that?

18 MR. PAULSEN: No, Your Honor.

19 THE COURT: Okay. All right. So I'm going to,  
20 right after "district" on the bottom of that page, I'll say,  
21 "The island of Manhattan is in the Southern District," right?

22 MR. FRISCH: Yes.

23 THE COURT: Okay. Hold on a sec. Okay.

24 MR. FRISCH: And, Your Honor, the only other  
25 objection I have -- and I think this is just making sure that

PROCEEDING

821

1 I objected, I think you've already ruled on this, I think the  
2 definition of the crime conflates different parts of the  
3 statute, number one.

4 Number two, I think the use of the four verbs in the  
5 statute, even in the conjunctive, informs how a jury should  
6 consider the definition of "injury." Number three, I think  
7 the last paragraph on page 25 -- or rather, the last sentence,  
8 I beg your pardon, on page 25, with respect is an incorrect  
9 statement of the law.

10 And, finally, I think some of the words used to  
11 describe "injury" such as: Hinder, make slow, hamper, make  
12 difficult, are among words and terms that dilute or at least  
13 change what Congress intended by the first sentence or the  
14 first part of Section 241.

15 THE COURT: What's your response to that?

16 MR. PAULSEN: Your Honor, we briefed and argued  
17 these issues before Judge Garaufis. And he issued a long  
18 opinion clarifying these points in particular. And I believe  
19 Your Honor's instruction tracks that opinion, and so we would  
20 object to the defendant's characterization.

21 THE COURT: Just so the record is clear, I think  
22 Judge Garaufis' opinion was based on precedent and definitions  
23 in other cases; is That Right?

24 MR. PAULSEN: Right, Your Honor. There are a  
25 hundred years of 241 cases with jury instructions to match.

PROCEEDING

822

1           THE COURT: All right. Well, if I didn't -- I  
2 thought we had this conversation when we talked about it  
3 before, but definitely I think the record is preserved. And  
4 so you have an exception.

5           Just one question. And the only other thing is with  
6 respect to the verdict sheet, I'm not going to separate out  
7 the question of venue from the basic question of how the jury  
8 finds. I'm not aware of any case law that requires that, and  
9 it's just another element that the jury has to find, albeit by  
10 a different standard. So you have an exception to that, as  
11 well.

12           MR. PAULSEN: Thank you, Your Honor.

13           THE COURT: All right. How are we doing on that  
14 stipulation?

15           MR. BUFORD: We just need him to print it, Your  
16 Honor.

17           THE COURT: Okay. Do you want to e-mail it to us  
18 and we'll print it?

19           THE COURTROOM DEPUTY: She did, I just haven't  
20 received it yet.

21           MR. PAULSEN: Your Honor, for summations, do you  
22 want us to wear a microphone when we're near the jury?

23           THE COURT: I want to make sure everybody can hear  
24 you. And I think that's probably a good idea because we do  
25 have an overflow room, and I also don't want to make it

PROCEEDING

823

1 difficult for the court reporter.

2 THE COURTROOM DEPUTY: Judge, we don't have an  
3 overflow.

4 THE COURT: Oh, we don't. We don't have an overflow  
5 room.

6 Also just a reminder, possibly another triumph of  
7 hope over experience, but if you could make sure that you  
8 don't speak too quickly.

9 MR. PAULSEN: I'm going to try, Your Honor.

10 THE COURT: No, you're going to do it. Just write  
11 yourself a big note in red.

12 MR. BUFORD: Your Honor, I don't know that it's  
13 worth putting it on the record. We just have one or two very,  
14 very minor comments on the jury instruction for your  
15 consideration. It's just minor stuff.

16 THE COURT: Well, do you want to put them on the  
17 record or not?

18 MR. BUFORD: No, Your Honor.

19 MR. FRISCH: I don't think it's necessary.

20 THE COURT: Wait. What do you want me to do?

21 MR. FRISCH: These are all nits, Judge. These are  
22 all, like, just little nits.

23 THE COURT: Oh, typos and things like that?

24 MR. BUFORD: Yes.

25 THE COURT: Oh, we'll fix those. Do you agree to

PROCEEDING

824

1 those?

2 MR. FRISCH: I agree to all of them.

3 THE COURT: Okay. Oh, good. Well, thanks for  
4 finding those.

5 MR. BUFORD: And, Your Honor, the last version we  
6 got in the instructions had instructions about calling out  
7 venue separately on the verdict form, but we assume that's  
8 going to come out --

9 THE COURT: Yeah.

10 MR. BUFORD: Okay. Thank you.

11 THE COURT: Are we good to go?

12 MR. BUFORD: We're ready.

13 MR. FRISCH: We're ready.

14 THE COURT: All right. Let's get the jurors.

15 (Pause in the proceedings.)

16 THE COURTROOM DEPUTY: All rise.

17 (Jury enters the courtroom.)

18 THE COURTROOM DEPUTY: You may be seated.

19 THE COURT: All right. Good morning, jurors.

20 THE JURY: Good morning (unanimously).

21 THE COURT: I hope you had a good weekend. We are  
22 ready to continue with the trial.

23 Mr. Frisch, do you wish to call any additional  
24 witnesses or put on any additional evidence?

25 MR. FRISCH: Your Honor, I have no additional



PROCEEDING

825

1 witnesses. But I would like to read a stipulation to the  
2 jury. May I do it from the podium?

3 THE COURT: You can do it from there. It's fine.

4 MR. FRISCH: So this is a stipulation signed by the  
5 lawyers.

6 In the months prior to the 2016 presidential  
7 election, means containing misinformation concerning how to  
8 vote were posted and shared on political messaging boards such  
9 as 4chan. At least one member of the Clinton campaign staff  
10 observed these means containing misinformation concerning how  
11 to vote on 4chan in the months prior to the 2016 presidential  
12 election and brought them to the attention of other staff  
13 members after she observed them.

14 It is further agreed that this stipulation marked as  
15 Defense Exhibit BB is admissible as evidence at trial.

16 And I offer this stipulation into evidence, Your  
17 Honor.

18 THE COURT: All right. I think I told you about  
19 stipulations before, so that's also in evidence for your  
20 consideration.

21 (Defense Exhibit BB, was received in evidence.)

22 THE COURTROOM DEPUTY: And does this conclude the  
23 defense presentation?

24 MR. FRISCH: Your Honor, it does. Mr. Mackey rests.

25 THE COURT: All right. Anything further from the

PROCEEDING

826

1 Government?

2 MR. PAULSEN: No, Your Honor.

3 THE COURT: All right. So at this point in the  
4 trial, ladies and gentlemen, the lawyers have the opportunity  
5 to address you in closing arguments or summation. And the way  
6 that works is the Government will present its argument first,  
7 then the defense will present its summation, and then the  
8 Government has the opportunity to address you again.

9 I've told you at several points during the trial  
10 that what any lawyer says during the course of the trial, and  
11 that includes summations, is not evidence. You are the judges  
12 of the facts, and it is your recollection of the facts that  
13 control. And as I've also mentioned at various points in the  
14 trial, if you need to have your recollection refreshed about  
15 what testimony was or what a particular exhibit was, you'll  
16 have access to all of that during the course of your  
17 deliberations. But the purpose of summation is for the  
18 lawyers to review the evidence and suggest to you the  
19 conclusions that you can draw from it.

20 So with that, we will begin with the summation by  
21 the Government. Go ahead.

22 MR. PAULSEN: Thank you, Your Honor. Good morning.

23 THE JURY: Good morning (unanimously).

24 MR. PAULSEN: Over the last week, we presented you  
25 with evidence showing what the defendant, Douglass Mackey also

1 known as Ricky Vaughn, entered into a conspiracy against  
2 rights. The defendant joined with others in a plan to  
3 distribute disinformation that he hoped would trick people out  
4 of casting their votes. And not just any people. He targeted  
5 his disinformation at his political opponents, voters of  
6 Hillary Clinton, focusing on Black people and women.

7           The evidence shows why he did this. He did it  
8 because he thought those groups were important to the  
9 election, he did it because he thought the election would be  
10 very close. And, fundamentally, he did it because he thought  
11 it would work, and because he didn't particularly respect  
12 those he was trying to trick.

13           The evidence we have shown you proves beyond a  
14 reasonable doubt that the defendant did these things, and,  
15 importantly, that he didn't do it alone. Now, over the past  
16 week you've heard a lot of evidence. You've heard testimony  
17 from about 20 witnesses, you've seen countless documents,  
18 you've seen several stipulations. You've heard recordings,  
19 and you've seen a lot of images.

20           All of that evidence came in for a reason. And I'd  
21 like to show you how we think it fits together. However,  
22 before we weighed into the key evidence and the key arguments  
23 in this case, I think it's worth going over a few things that  
24 are not actually in dispute here. First off, there's no real  
25 dispute what the defendant Douglass Mackey is the individual

SUMMATION - MR. PAULSEN

828

1 known as Ricky Vaughn. You heard the parties enter into a  
2 stipulation.

3 Donna, may I publish?

4 THE COURTROOM DEPUTY: What are we using?

5 MR. PAULSEN: There we go. Thank you, Donna.

6 (Exhibit published.)

7 MR. PAULSEN: You heard the parties enter into a  
8 stipulation which just means we agreed to something, that the  
9 defendant used the three important Twitter accounts in this  
10 case, Ricky Vaughn 99, the Ricky Vaughn, and Return of RV.  
11 Although the Government always has the burden of proof in this  
12 case, the defendant decided to concede this rather than having  
13 the Government go through the process of proving this to you.

14 But I submit to you that the defendant conceded this  
15 because there was really no reason to fight it. As the  
16 Government was going to establish this point beyond a  
17 reasonable doubt. You heard testimony that the defendant was  
18 anonymous during the election and then he continued to be  
19 anonymous for about a year and a half following the 2016  
20 election.

21 But you heard what happened next. His true identity  
22 was revealed against his will. He got doxed in 2018. That's  
23 the word that's used for it. Now you saw how his true identity  
24 was revealed. The defendant was working for Paul Nehlen who  
25 was a congressional candidate who you heard from at this

1 trial. Paul Nehlen had hired Ricky Vaughn. They got in a  
2 dispute and Nehlen revealed the defendant's identity to the  
3 world.

4 Now, that fact was quickly confirmed by  
5 Loren Feldman who was a filmmaker that you also had heard  
6 from. Loren Feldman had met Ricky Vaughn in person, and he  
7 filmed a documentary with him, but he didn't know his real  
8 name. So basically you had two pieces of evidence:

9 Paul Nehlen knew that Douglass Mackey -- the real name was  
10 Douglass Mackey but Loren Feldman had seen his face. A  
11 journalist put these two things together and matched it up.  
12 His identity was revealed.

13 Now, this was a surprise to many people, even his  
14 roommate at the time, Marc Bertucci who you heard from. He  
15 didn't know this at all. Now it was only then when his  
16 identity was revealed that the investigation into the  
17 defendant could begin.

18 And that investigation still had to prove that it  
19 was really Douglass Mackey that was using all those accounts.  
20 I believe you got a sense of how the Government was going to  
21 prove that. Special Agent Anthony Cunder, our summary  
22 witness, told you that even though the defendant never used  
23 his real name in any of his private messages, he dropped lots  
24 of bread crumbs about himself, things that could connect  
25 Ricky Vaughn to Douglass Mackey.

1           You might recall that he mentioned his age, he  
2 mentioned that he lived in New York City, he mentioned that he  
3 lived in Manhattan on the Upper East Side. He said he was  
4 from Vermont. He said he went to Middlebury College. He even  
5 said what his best time was when he ran on the track team.

6           Significantly, in all these accounts, he used the  
7 same e-mail accounts and Facebook account to link those  
8 Twitter accounts, which enabled the Government to tie them  
9 together. All those facts connected Douglass Mackey to the  
10 Ricky Vaughn accounts. Now, the defendant is admitting this.  
11 It's not really in dispute anymore, and that's his choice.  
12 But I submit to you that he's admitting it because there was  
13 no point in denying it.

14           That brings us to the second big thing not in  
15 dispute here. The defendant isn't really contesting that he  
16 sent these fake ads. He agreed the Twitter accounts are his.  
17 He agreed that the records are authentic. And he took the  
18 stand and he told you he did it. Again, that's his choice.  
19 But I would submit to you that the reason that he's admitting  
20 this is that there's no point in denying it.

21           So okay, what's in dispute here? The first thing I  
22 expect the defendant's going to dispute is whether this is the  
23 proper venue for the case. Now, for reasons I'm about to  
24 describe, I don't think this is really in dispute. But I  
25 think it makes sense to address this first, get it out of the

SUMMATION - MR. PAULSEN

831

1 way so we can address the key issues in this case. Part of  
2 what you have to determine, as the jury, is whether any part  
3 of the crime, any part of the crime happened in this district.  
4 That's what venue means.

5 Unlike the ultimate question in this case, you only  
6 have to find facts establishing venue by a preponderance of  
7 the evidence. That means more likely than not. You heard  
8 from several witnesses in this trial who provided bits and  
9 pieces of evidence that clearly establishes that venue is  
10 proper here.

11 Now, first, I think you heard the pretty obvious  
12 reason why this case is here in New York. The defendant lived  
13 in New York. Prior to the 2016 election, he was a New York  
14 City resident. He lived in Manhattan, and he worked in  
15 Brooklyn just down on Court Street a few hundred feet from  
16 this courthouse a few months before the 2016 election. This  
17 is where he lived. And it's where he committed the crimes  
18 charged in this case.

19 Now, the evidence indicates the defendant was living  
20 in Manhattan on November 1st and 2nd, 2016, when he sent out  
21 the two fake ads that Robert McNees showed you. You saw that  
22 in Stipulation 904. He says he was here at the time. You  
23 also heard that from his roommate, Marc Bertucci who said he  
24 lived with the defendant just prior to the election.

25 Now, the main reason his roommate was here, though,

SUMMATION - MR. PAULSEN

832

1 was to tell you a specific fact, how they got their Internet.  
2 They got their Internet through Spectrum. Bertucci told you  
3 that they used Spectrum cable for Wi-Fi, and that information  
4 is highly relevant to establishing venue. Now, you heard from  
5 a few witnesses who came to share some technical knowledge  
6 about how the Internet works around New York City.

7 Now, that evidence was presented to you because I  
8 expect the Court is going to instruct you what the defendants  
9 tweets which contain the fake ads if they pass through the  
10 Eastern District of New York where we are now, venue is  
11 established. And the Court's going to tell you that the  
12 Eastern District the New York includes the waters that  
13 surround Manhattan. I submit what the evidence that is fake  
14 ads, passing through this district is entirely clear, but I'd  
15 like to briefly put it together for you.

16 First, John Hendrickson of Spectrum testified.  
17 That's a bit of his testimony on the screen. He testified  
18 because Marc Bertucci told you he and the defendant used  
19 Spectrum. He told you that any signal sent over Spectrum  
20 systems from Manhattan would have to pass through the big  
21 fiberoptic cables that connect Manhattan to the rest of the  
22 Internet. You see Manhattan is an island of course. And just  
23 like there are only certain places where cars can pass in and  
24 out of Manhattan, it's the same with Internet signals.  
25 They're basically the same places. It's the bridges and the

AVERY N. ARMSTRONG, RPR  
OFFICIAL COURT REPORTER



SUMMATION - MR. PAULSEN

833

1 tunnels. Those fiberoptic cables run along the bottom of the  
2 rivers, under the bridges as they leave Manhattan.

3 Now, Joel DeCapua of the FBI also testified. He  
4 testified as an expert. He told you much of the same things  
5 that John Hendrickson told you. But he also clarified that if  
6 the electronic communications were sent over a phone system,  
7 it would be the same. That those signals would have to move  
8 through those same fiberoptic cables on their way off of  
9 Manhattan. Both told you this would be true no matter where  
10 you are in Manhattan where the defendant stipulated he was.

11 And, of course, where was the final destination of  
12 these messages? You heard from Michael Anderson who was an  
13 engineer at Twitter. He was here to tell you that those  
14 messages were sent to Atlanta, Georgia, and Sacramento which  
15 is where they kept their servers. So anything sent from  
16 Manhattan would have to go there. He also told you that he  
17 reviewed Twitter's records, and he showed that one of the  
18 tweets was sent from a desktop computer, another from a mobile  
19 device, so we have it both ways.

20 Now, I expect that you'll be instructed that this --  
21 these facts, if you credit it, is enough on its own. The  
22 evidence, the testimony of Bertucci, Hendrickson, DeCapua, and  
23 Anderson all have technical evidence wasn't really challenged  
24 in this case which is why I said to you that I don't think  
25 this fact is seriously in dispute. But of course, even if

AVERY N. ARMSTRONG, RPR  
OFFICIAL COURT REPORTER

SUMMATION - MR. PAULSEN

834

1 those signals were not entirely sufficient on their own, which  
2 I submit to you they are, you don't really need more than  
3 that.

4 It's not the only connection to this district. Even  
5 without the defendant's residence in this area, his home city,  
6 the Judge will tell you that the materials of this conspiracy  
7 were -- the Judge will tell you that if the materials of this  
8 conspiracy were foreseeably sent and received into this  
9 district, that also establishes venue.

10 You heard from Microchip, the cooperating witness.  
11 He told you the purpose of the conspiracy was to spread the  
12 fake ads everywhere, to make them go viral so they would be  
13 seen by as many people as possible. Those places would  
14 include Brooklyn and other places in the Eastern District of  
15 New York. So I submit to you what the fact what the fake ads  
16 with those very same text codes were seen by people in  
17 Brooklyn, like the people right across the street at the  
18 Clinton campaign, would have been foreseeably expected by the  
19 co-conspirators.

20 Okay. Let's get to the heart of the evidence,  
21 though. You heard from Robert McNees who was in Chicago at  
22 the time. He was an active Twitter user in 2016. He saw  
23 these events while they were happening. He took screenshots  
24 of what he saw that day, the tweets that we put on these  
25 boards.

SUMMATION - MR. PAULSEN

835

1           Let me put one up for you. Now, you saw a few  
2 versions of these. We're going to put up on the screen, the  
3 two electronic versions but you can see the poster boards  
4 below, as well. He also took another screenshot. That was  
5 this one.

6           Now, this one is worth looking at again, and it's on  
7 the screen right now. But we'll discuss it again in a moment.  
8 It was sent by nia4\_trump, a name that should sound familiar  
9 to some of you. Among other things she was a member of the  
10 War Room, one of the direct-message groups that the defendant  
11 was part of, the same one that Microchip, the cooperating  
12 witness, was part of. She sent out different fake ads than  
13 the ones selected by the defendant. She thanked Ricky Vaughn  
14 for spreading the word, and then he re-tweeted her, sending  
15 the information to his army of followers, spreading it  
16 further.

17           Now, before we move on, I think it's worth pausing  
18 here and taking a look at the fake ads the defendant sent. I  
19 think it's worth pausing and taking a good look. I'd like you  
20 to think what this is. It's not funny. There's no really  
21 joke here. It's not making fun of anybody. It's not satire  
22 of a politician or a political position. It's not trying to  
23 drive debate. It's not even a smear or a personal attack.  
24 There's none of that.

25           It's just fraudulent information about how to vote.

AVERY N. ARMSTRONG, RPR  
OFFICIAL COURT REPORTER

SUMMATION - MR. PAULSEN

836

1 And more than that, it looks like a campaign document. It  
2 looks like something the campaign might have made itself.  
3 Take a look at bottom. It has the campaign logo. It has a  
4 sort of fine print that you'd see on official documents  
5 telling you who can and can't take advantage of whatever's  
6 being offered. It even says, Paid by Hillary for President  
7 2016.

8 Now, before we consider the rest of the evidence in  
9 this case, I think it's fair to ask, why do this? The  
10 defendant said he was trying to bother the campaign or  
11 something to that effect. But can you do that in a lot of  
12 ways. You can mock a candidate, you can talk about her  
13 policies, you can highlight embarrassing things she's done or  
14 said. This has none of that. I submit to you that it is what  
15 it is. It's going after voters.

16 Then we have the second one, the one here. This one  
17 is in Spanish, and you heard the translation. The information  
18 is about the same. Like the other ones, it uses the hashtag,  
19 I'm with her, which is one of the hashtags the campaign used.  
20 You heard Jess Morales Rocketto talk about that hashtag, and  
21 you heard Microchip talk about it. It was a hashtag the  
22 campaign used. It was one you would search to get information  
23 about the Clinton campaign at the time.

24 And I submit to you, this is one of the hashtags you  
25 would use if you wanted to put something in front of the eyes

SUMMATION - MR. PAULSEN

837

1 of people who liked then candidate Clinton or supported her.  
2 Now, and finally, looking at these two, the two on the screen,  
3 what else do we know? So neither is a re-tweet, although he  
4 did that too, and we'll talk about that in a moment. These  
5 were tweets what the defendant made.

6 In his opening, the defendant talked about two  
7 clicks, I think that's how he described it, two clicks.  
8 That's not really true, is it? He had to get these pictures  
9 from somewhere, grab them, copy them, manually upload them, he  
10 had to type in the hashtag and the rest of the message. He  
11 did that, waited seven hours, and did it again.

12 Now, part of your job as a juror is to use your  
13 judgment as you weigh through the evidence and argument, your  
14 tasked with applying common sense, the common sense you would  
15 use for any other important decision in your life. The judge  
16 will read you in some instructions to that affect.

17 Now, I submit to you that even if you didn't know  
18 anything else about the defendant, you didn't know anything  
19 about his agenda, his plan, his preferences, his politics, I  
20 think you would know why he sent that. I think it's worth  
21 dwelling on that for a moment before shifting our focus to  
22 what else you learned about the defendant, because I submit to  
23 you that everything else you learned in this case reinforces  
24 that common sense. Everything else in this case reinforces  
25 the conclusion that the defendant did this for the simplest

AVERY N. ARMSTRONG, RPR  
OFFICIAL COURT REPORTER

SUMMATION - MR. PAULSEN

838

1 and most straightforward reason of all, he wanted people to  
2 fall for it.

3 Now, you heard from a number of people who were  
4 involved, who saw these fake ads and took action, and it was  
5 these people who frankly ensured what the scheme didn't get  
6 off the ground, that it was foiled as it began.

7 You first heard from Jess Morales Rocketto, one of  
8 the staffers at the Clinton campaign. She told you she was  
9 sitting across the street here in Brooklyn when the fake ads  
10 were brought to her attention as a member of the staff. She  
11 told you that she thought they had looked like they had come  
12 from the campaign but they obviously weren't. The word she  
13 used was "sneaky." It copied the looks, the colors, even the  
14 fonts that the campaign used, and it used one of their  
15 hashtags, I'm with her.

16 The next person you heard from was Lloyd Cotler,  
17 Lloyd Cotler was another staffer, he worked for her. He  
18 worked for Jess morales Rocketto. Now, he had the same  
19 impression, but he was very experienced in the text code  
20 world. And so he was able to look up and find out who had  
21 this text code. Now, remember, this is a couple of days  
22 before the defendant sends these out. This is around  
23 October 29th, October 30th.

24 Now, Cotler contacted a company called Upland  
25 Communications that he used to work with. He met somebody

1 named Matias Ty Chesley, who you heard testify, who he thought  
2 could help him figure out who had this text code, and they  
3 found the right person.

4           They found it belonged to a company called iVision.  
5 Now, you heard from the CEO of iVision, Omar Samiri, who came  
6 and testified in this trial, he ran that company. You'll  
7 recall, he was really frustrated with this happening. He told  
8 you he thought the fake ads were fake too. But he also had  
9 sort of a personal concern here.

10           He was concerned that it looked, to the outside  
11 world, that his company was participating in this, that the  
12 people who were trying to send this false information about  
13 voting were his customers. He was worried about this because  
14 he was afraid that the phone carriers would cut him off, and  
15 so just like the others, he snapped into action.

16           Now, this is all happening just in the days before  
17 the defendant sends this out. Rocketto, Cotler, Chesley,  
18 Samiri had all been collectively figuring out what was  
19 circulating in some of these areas. And they were getting in  
20 touch with the right people, and they were in a position to do  
21 something when it was necessary.

22           So you saw what happened next. The defendant sends  
23 these things out soon thereafter. Each one about seven hours  
24 apart. Now, they had the same text code as the materials that  
25 Rocketto, Cotler, Samiri, and Chesley had seen. It's the same

1 text code owned by iVision, same hashtag being used. But  
2 within a very short time, Samiri who ran the company was able  
3 to put a warning into place.

4 The warning basically said, this is fake, this is  
5 not a real voting initiative, this is not what you think it  
6 is. He was able to act quickly because they saw this coming,  
7 and they were ready to respond. That is they were ready to  
8 respond when the defendant sent his out.

9 Now, over the next few days, thousands of numbers  
10 texted the code and nearly all of them, about 98 percent, come  
11 after the warning is in place. Now, at this point, people  
12 could have seen the fake ads in a few places. They were still  
13 being forwarded around Twitter.

14 You may recall that Mr. McNees showed you these. He  
15 took a screenshot on election day. He had been personally  
16 told by Jack Dorsey, the CEO of Twitter, that these violate  
17 the terms of service, but things were still swimming around.  
18 Now, you've seen both these fake ads before. One of them is  
19 right here. It's the same one that nia4\_trump sent out that  
20 the defendant reforwarded, the other one you saw in the War  
21 Room and you saw in the Micro Chat.

22 The text is a little hard to read from here, but you  
23 can see one of the people is saying, it's not fair that Trump  
24 voters can't do this. The other people are just saying vote  
25 from home, do it this way. All three are acting like it's a



1 real thing, telling people to do it.

2 Now, at the exact same time, this scheme is being  
3 publicized on T.V. and newspapers. You heard from  
4 Ms. Rocketto, this was deliberate. They were trying to  
5 publicize that this was happening. Now, without a doubt,  
6 people would have seen it there, too. The important thing  
7 however is that the scheme was undermined, the plan was foiled  
8 just as it was getting off the ground. And, as a result,  
9 nearly anybody who would have texted it, would have gotten the  
10 warning.

11 Now, the Court is going to give you detailed  
12 instructions on the elements of the crime in this case. The  
13 crime charge is conspiracy which means a criminal agreement.  
14 The judge will instruct you in the law. And you should only  
15 follow what the Court says. If I say anything different, you  
16 should obviously listen to the Court. But I expect that the  
17 Court will tell you that there are a few primary elements to  
18 this crime.

19 First, you have to determine that the conspiracy  
20 existed. The Court will tell you that a conspiracy is just  
21 two or more people having a meeting of the minds and then  
22 working together for an unlawful purpose. The conspiracy  
23 itself is the crime. The Government doesn't have to prove the  
24 conspiracy achieved its aims or really if it worked at all.

25 Instead, the Court will tell you -- or rather the

SUMMATION - MR. PAULSEN

842

1 Court will tell you that it's not necessary that everybody in  
2 the conspiracy got together and had a formal meeting to decide  
3 who would do what. Common sense will tell you that in  
4 criminal conspiracies, many portions of it are left unsaid and  
5 much of it is secret. The important thing, however, is that  
6 there was a mutual understanding.

7 Second, the Court is going to tell you that you have  
8 to determine that the defendant intentionally joined the  
9 conspiracy with the objective of injuring the right to vote.  
10 The Court will tell you that the defendant didn't have to know  
11 everybody in the conspiracy, didn't have to know the true  
12 identities of everybody, didn't have to know every role that  
13 everyone else was playing. Whether he's in a conspiracy is  
14 not determined by how long he was there.

15 The important thing -- and I expect the Court will  
16 say something exactly to this affect, is that the defendant  
17 participated with the knowledge of at least some of the  
18 purposes and objectives of the conspiracy and with the  
19 intention of aiding the accomplishment of those unlawful acts.

20 Finally, the Court will tell you what it means to  
21 injure the right to vote. Injure can mean a number of things,  
22 can mean obstruct, hinder, prevent, frustrate, make difficult,  
23 among other meanings. It's enough that someone tried to  
24 prevent voters from exercising that right.

25 Okay. So let's get into the evidence now. Let's

SUMMATION - MR. PAULSEN

843

1 review what we learned in this case. First and foremost, the  
2 investigation found that in the lead-up to the 2016 election,  
3 when this happened, the defendant was involved in three  
4 separate groups, all private, that were involved in creating  
5 this disinformation, strategizing over this disinformation,  
6 and distributing this disinformation. He was involved in  
7 three separate private groups that spent large parts of 2016,  
8 organizing their members to spread information in the most  
9 affective way possible.

10 They were working together, using and highjacking  
11 hashtags in an effort to bend Twitter to their will, to make  
12 their own materials go viral, and to spread things everywhere.  
13 You saw a lot of information about these groups. And I know  
14 it came to you a bit fast and all at once. Let me recap it a  
15 little bit.

16 One group was called the War Room. This was the  
17 group that the defendant was always part of. It was the group  
18 that was styled as a strategy group. It's the one that  
19 Microchip was part of, as well. You may recall this language  
20 from the first message when the War Room started. The first  
21 message in the group stated, quote, We have to work together  
22 like a unit, so keep this group open and use it like our  
23 strategy war room.

24 The next group was the Micro group, another one that  
25 Microchip and other members of the War Room and Madmen group

AVERY N. ARMSTRONG, RPR  
OFFICIAL COURT REPORTER

1 used. The defendant was in that one, too but then didn't  
2 return after he was kicked off Twitter.

3 And then there were the two Madmen groups, Madmen  
4 One and Madmen Two. The defendant was part of both of those  
5 groups from the beginning, as well. But he was also out of  
6 that group for a time after he was suspended.

7 You may recall that that group is the one where they  
8 were pushing celebrity Photoshops of people with hats way  
9 before the election. But that's also the group where some of  
10 the vote by text ideas seem to have taken hold very early.  
11 That's the one where they were building on what happened in  
12 Brexit.

13 Now, nothing about the defendant's involvement in  
14 any of these groups would have been visible to the outside  
15 world while it was happening. The evidence of the discussions  
16 in these groups gives you a window in to what was happening  
17 behind the scenes in private when the defendant and his  
18 co-conspirators were sending things like this out.

19 Now, as I just mentioned, the crime here is only one  
20 count, one count of conspiracy. In essence, a criminal  
21 agreement. Now, the charge of conspiracy is particularly  
22 fitting here because nothing in this trial makes sense without  
23 a conspiracy. The activity you've seen laid out only makes  
24 sense with a conspiracy because coordination is not a side  
25 effect of this, it's the whole point. I think that's worth

SUMMATION - MR. PAULSEN

845

1 repeating here. Coordination is not a side effect here, it's  
2 the whole reason they're doing this.

3 If the defendant does one thing and Microchip does  
4 another, and the 20 or 30 other members of the group do their  
5 own things, their activities disappear as noise. They shout  
6 different things at different times. Their messages and  
7 statements get lost. But not when they work together. When  
8 they work together, their messages reinforce each other.  
9 Their shouts become a chorus and you heard why that is. The  
10 defendant and his co-conspirators didn't join together merely  
11 because they thought 20 or 30 or 50 is better than one. I  
12 mean, that's certainly true, but that's not why they acted  
13 that way. They joined together and worked together to repeat  
14 the message over and again at the same time because when they  
15 do that, Twitter notices.

16 The brain behind Twitter, the computer algorithms  
17 sees a message getting traction all of the sudden, and they  
18 make a trend. Twitter then sends the message to more and more  
19 people. It displays the hashtag to more and more people as  
20 Microchip told you. The defendants and his associates had  
21 figured something out. They had figured out they could force  
22 the messages they wanted on the wider public if they all  
23 worked together and acted in unison.

24 You know all of this because Micro told you. He  
25 walked you through how they did it. But you also know it

AVERY N. ARMSTRONG, RPR  
OFFICIAL COURT REPORTER

SUMMATION - MR. PAULSEN

846

1 because the defendant and the members of this group talked  
2 about it all of the time.

3

4 (Continued on the following page.)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

SUMMATION - MR. PAULSEN

847

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 (Continuing.)

2 MR. PAULSEN: Put simply, I submit to you that there  
3 was no point of doing this activity alone to only makes sense  
4 of a conspiracy.

5 Now, during this trial you've seen the conspiracy in  
6 action. You've seen discussions behind the scenes. You've  
7 seen the people who crafted these messages. You've seen  
8 people who've shared these messages, discussed how to make  
9 them better and when to release them. And you've heard from  
10 Microchip, one of the central members of some of these groups.

11 Now there were different groups, but they all had  
12 overlapping memberships. The defendant has a common presence  
13 and, frankly, a common interest of all the members of the  
14 groups.

15 So how do we know the defendant was part of this  
16 conspiracy? First, and this is sort of a basic point, we know  
17 the defendant didn't act alone. There's no indication he made  
18 any of these images.

19 Here's one of the Government's exhibits, 200-D-10.

20 The defendant says: I can get anything I want  
21 Photoshopped in one hour.

22 There's a lot of statements like this. The  
23 defendant wasn't the Photoshop guy. He's not the one making  
24 any of these things. You saw numerous occasions he asked  
25 people to create things and they did. He said the same on



1 direct examination. Here, and as in all of the earlier  
2 occasions, he's pushing the work of others. Others who had  
3 the same intent. Everyone had a role, and the defendant  
4 wasn't the artist here. The defendant was instead using his  
5 particular power occupying his particular role that he was  
6 most suited to play. When the defendant sent out the fake ads  
7 far and wide, he was using that power, his ability to spread  
8 things everywhere on the kind of materials that his  
9 co-conspirators had been working on.

10 Now, Microchip told you that the War Room, which we  
11 just showed a moment ago, was a place for people with  
12 particular skills. He said: Everyone there had brought  
13 something to the table, had some reason for being there.

14 The defendant's particular skill is that he had the  
15 megaphone. He and Microchip actually had that in common. The  
16 defendant could blast things further and farther and more  
17 effectively than the others, and Microchip had a similar  
18 ability. Their great skill was distribution, not creation.  
19 But you didn't need Microchip to tell you that. You saw the  
20 defendant in his own words -- his own words, excuse me, and  
21 the conversations he had with others in these private groups  
22 about his unique ability and his army of followers.

23 Here we have some of the defendant's statements. He  
24 says he's got the most loyal army on Twitter and the most  
25 active fans. Here he says: It's like at any one time there's

1 an army of a hundred of my followers ready to swarm.

2 He knew this, and everyone knew this about him.

3 And this wasn't just perception. It's not like they  
4 were wrong about this. It was actually true. You heard the  
5 people who worked at the Laboratory for Social Machines, which  
6 was a part of MIT, which is a very big engineering and  
7 computer science school. They did a study in 2016 well before  
8 the election on people who were influencing discussion more  
9 than everyone else. You saw how that project intersected with  
10 the facts of this case. Bill Powers told you that they did  
11 the project in part as they wanted to see who was actually  
12 driving discussion and debate, and he was curious to see it  
13 was the usual suspects or if there were new people given  
14 social media's power. He told you he remembered Ricky Vaughn  
15 being on the list. He said he had no idea who that was. But  
16 he thought it was interesting that there were people on this  
17 list that he hadn't heard of.

18 Now, Google scientist Eric Chu came and testified as  
19 well. He's the one who actually did the programming for it.  
20 He told you that they had a few different ways of measuring  
21 activity for this list. He said sometimes you would get a  
22 high rating out of a centrality in the news if your name was  
23 mentioned a lot. I think the example that was given was  
24 Ronald Reagan. Ronald Reagan is still mentioned a lot, but  
25 he's not tweeting anything. He's dead. But he still appears

1 a lot because he's important and his name has resonance.

2 Ricky Vaughn made the newspapers every once in a  
3 while, but that's not why he's on this list. He's on this  
4 list because of how people acted through the things he sent,  
5 his army of followers. You saw that effect that the MIT  
6 ranking had on the people in his groups. They were impressed,  
7 and for good reason. You saw the defendant was fairly proud  
8 of it as well. This was but one example where he talked about  
9 it. And Microchip told you as well, he said that people in  
10 the group knew this and they were impressed as well.

11 Now, the MIT decision shouldn't have been a  
12 surprise. Everyone in these groups knew that the defendant's  
13 power of distribution was potent. They were making fake ads  
14 and fake things like that, but the defendant's role was to  
15 push things. That's what he was best at.

16 Now, before we talk more about the conspiracy,  
17 there's one think we should quickly address. The defendant  
18 and Microchip had one other thing in common, one key  
19 similarity. They both had red hats on their avatars. You  
20 might remember this. The left is Microchip; the right is  
21 Ricky Vaughn.

22 Defense counsel has hinted that the presence of this  
23 red hat is somehow a problem. The defendant said the same  
24 thing when he testified.

25 Now, I think the argument is why send things that

1 you want Clinton voters to see if you have a red hat on your  
2 avatar, but you heard Microchip's answer. That wasn't a  
3 problem. I think you can use your common sense here. I think  
4 it's fair to say that the first thing that the defendant and  
5 Microchip wanted were for things to spread everywhere. The  
6 first thing that was going to happen is their own followers,  
7 the people that they were aligned with, were going to spread  
8 things, and those folks weren't going to have any issue with a  
9 red hat. But Microchip was asked about this.

10 QUESTION: In the tweet in which you encouraged  
11 people to vote my hashtag you were wearing a MAGA hat in your  
12 profile picture; correct?

13 Correct.

14 Didn't you think that since the tweet was directed  
15 at Clinton supporters that might tip them off that it was a  
16 hoax in some way?

17 ANSWER: It could, but I have multiple strategies in  
18 doing something that. Part of that was a tweet like that  
19 would be copied by somebody else and spread like wildfire.  
20 That was the intention. It doesn't really -- I want people to  
21 see that tweet obviously, but having that tweet out there  
22 attached to a MAGA hat doesn't mean it will stay there. My  
23 intention with all of this was to spread that information as  
24 far as it could go. If somebody picked that up without a MAGA  
25 hat or if a Clinton supporter picked that up and say I found

1 this thing, I guess we can vote by hashtag.

2 Microchip figured that once things got widespread  
3 and trended on Twitter as the groups had hoped, the fake ads  
4 would be spread beyond the tweets. The more people it got to,  
5 the more likely it would separate from its original source.  
6 Microchip spread this kind of disinformation about as well as  
7 the defendant did and he didn't think twice about this.

8 Let's get back to the conspiracy, though.

9 How else do you know he was acting in furtherance of  
10 the conspiracy? Well, first off, you know he agreed with at  
11 least one other person. This was shown a few times in  
12 evidence, but I want to underscore its importance.

13 Now, Robert McNees was taking screenshots of the  
14 fake ads. He grabbed this one as well. This is not the one  
15 the defendant sent. It's the one he re-tweeted. Now you've  
16 seen nia4\_trump a few times. Here she is just before he  
17 re-tweeted this. The defendant was forwarding some of her  
18 DraftOurDaughters materials. They were both in the War Room.

19 Now, what do we see in the fake ad? We see  
20 nia4\_trump thanking Ricky Vaughn for what he had done earlier  
21 that day. And of course what does the defendant do? He  
22 re-tweets her sending it out to his followers as well.

23 Now, the deceptive ad that nia4\_trump sent isn't the  
24 one the defendant sent, it's not one of those two, but you've  
25 seen it before. It was shared in the Madman Group the same

1 day. You see it on the screen.

2 Now, where else of course do we see nia4\_trump? She  
3 was in the War Room. This is her responding to the Aziz  
4 Ansari memes that Microchip had shared, the ones in which he  
5 said people should vote by hashtag. Here she is talking to  
6 Microchip after Microchip shared yet another. Now, what does  
7 she say? She says: I got suspended, Micro, for posting that  
8 text vote meme.

9 She says: No, don't. Ricky and I got suspended for  
10 that.

11 Now, Robert McNees screenshotted this, and the  
12 screenshot shows the defendant and Nia working together, both  
13 War Room members, both amplifying each others disinformation  
14 about voting. The judge will instruct you that a conspiracy  
15 only requires two people. Two people agreeing with each other  
16 to further the criminal plan is enough. There's much, much  
17 more to this case than that, of course, but I submit to you  
18 that what you see here on its own is enough to show that  
19 common criminal plan in action. Two members of the War Room  
20 working together trying to trick people out of voting.

21 Now, the defendant amplifying the messages of the  
22 others in these groups like nia4\_trump in the War Room  
23 shouldn't surprise you. That was the defendant's specialty.  
24 It was his way of using his one particular power. When people  
25 reached out to him asking that he boost the message, he would.

1 It was understood that the defendant could make things move  
2 like no one else. And the defendant understood what Microchip  
3 told you as well; the key to making Twitter work was to work  
4 in that sort of coordinated way. Coordination is always what  
5 mattered.

6 Now, Special Agent Cunder showed you a chart. It  
7 was Government's Exhibit 500. You saw the purpose of this  
8 chart. On several occasion when members of the groups  
9 discussed pushing a message under a specific hashtag, Special  
10 Agent Cunder would check to see what the defendant did.  
11 Sometimes it was the defendant initiating a hashtag in one of  
12 these groups; sometimes it was the defendant chiming in on  
13 something somebody else introduced; and sometimes the  
14 defendant said nothing at all. But in each case, the  
15 defendant was out there using his megaphone to help the  
16 messages trend. This is just a sample of what Special Agent  
17 Cunder saw.

18 Now, most of the time they were doing this, the  
19 messaging was regular politics. Nothing unlawful. We showed  
20 you all this activity not because there's anything criminal  
21 about any of that. For example, Photoshopping a red hat on  
22 some celebrity. Like here. We showed it to you to give you a  
23 window of how the defendants in the other groups were  
24 operating together. The groups chose a target, created some  
25 memes, sent them all at once and held off the next target

1 until it was time to go. They wanted to be in sync working  
2 together. And ideally, when they found the right target, in  
3 words said by a member of the group that the defendant would  
4 have heard: You gotta go for someone with dumb fans, though.

5 Now, I submit to you that the evidence you've seen  
6 in this case showed that their techniques stayed the same  
7 whether the activities were legal or illegal.

8 Take an example from October just before the  
9 election, the DraftOurDaughters memes that we saw a moment  
10 ago. This was not an effort to injure the right to vote.  
11 This was not criminal. It was a political speech. But what  
12 did we see there? We see it get discussed and workshopped  
13 [sic] in all three groups at the same time; the War Room, the  
14 Micro Chat, and the Madman groups. We see discussions on how  
15 to make it most effective.

16 Look at this discussion in the War Room where the  
17 defendant is present. You have Microchip saying: Some of  
18 these memes alienate women, so sift through them. We want the  
19 war message, not the, quote, females shouldn't be what they  
20 want to be angle, at least in my opinion. I'm a dude, so I  
21 have no idea.

22 He's excited it's trending.

23 They also mentioned that they're getting them from  
24 4Chan. It say: 4Chan rocked this.

25 I think the evidence indicates that 4Chan was a



1 place where they would get a lot of these things.

2 Now, let's jump to the Micro Chat. We have a  
3 similar conversation. We have a user, again, concerned that  
4 it might not work right: The ones with chicks with guns, that  
5 can have kind of the opposite emotional effect we want. It  
6 can give women the, quote, yeah, tough chicks feeling.

7 That's not what they wanted, and so they're  
8 discussing, how do we modify these, how do we change our  
9 messaging to make sure it works. Now, in this one right  
10 there, the defendant is not actually present when that  
11 conversation is happening, but Microchip is there,  
12 HalleyBorderCol, and various other members of the other groups  
13 he's in. Again, the discussion is about how to make it work.

14 And then these memes are discussed much less so but  
15 a little bit in the Madman Group as well.

16 Now, the defendant -- defendant is in the War Room  
17 at this time and he doesn't say anything in particular about  
18 these particular images. But you know what he does? You saw  
19 this in the chart that Special Agent Cunder told you. He does  
20 what he always does. He's out spreading materials exactly at  
21 the same time the War Room is talking about it. And you saw  
22 the examples of who he's spreading it with. Here he is  
23 spreading things that Microchip posted. Here he is spreading  
24 -- HalleyBorderCol spreading things that Microchip posted.  
25 Here you have HalleyBorderCol and Microchip again. Here you

1 have the defendant forwarding nia4\_trump. All four members of  
2 the War Room. Even though the defendant wasn't talking about  
3 this meme at that moment, he acted just like he always did,  
4 spreading things with his group.

5 Now, the vote by text ads at the core of this case  
6 were distributed to the groups at around the same time as  
7 these, just a little bit after, and it's the same people that  
8 were just pushing the DraftOurDaughters stuff.

9 I just showed you the HalleyBorderCol one. You  
10 might recall she's the one who brought them into the War Room  
11 group. Nia4\_trump, the individual that Ricky Vaughn forwarded  
12 here, the same person that, just days before, he was  
13 forwarding with the DraftOurDaughters materials.

14 And then we have Microchip. You saw Microchip  
15 discussing the vote -- disinformation in detail in the War  
16 Room. I think it's worth going over what he says here. This  
17 is October 30th, so a couple days before the defendant sends  
18 these out.

19 What does Microchip say? He says: He sends out a  
20 tweet and he sends it to the group. Immediately one of the  
21 members there says: Micro, I like that idea, but what if we  
22 made it more believable by acting like it's unfair that they  
23 can text and vote and we can't?

24 Micro says: Fuck yeah -- or somebody else says:  
25 Fuck yeah, Greg. Smart.

Summation - Paulsen

859

1 And Microchip says: Yeah, true, Greg. I'm working  
2 on it. Let me see what I can come up with.

3 But you see what happens next. Somebody responds to  
4 Microchip, and somebody named LaurenNann says: We should do  
5 our own for real Donald Trump.

6 Microchip is concerned. He says: Here's what I'm  
7 worried about, Greg. People on the Trump side thinking this  
8 is legit and they stay home. I'm plotting. We'll have  
9 something soon.

10 UnityActivist chimes in again and says: Micro, what  
11 about if we say something like: It's too late because we  
12 didn't register for it, we have to do it next election or some  
13 shit.

14 And Micro says: Yeah, I think so.

15 They are play testing their messages and seeing if  
16 they're malfunctioning and then talking how to fix them.

17 Now, Microchip testified and told you about this.  
18 What he told you was what the documents already told you. He  
19 took the stand and told you what your common sense would have  
20 told you.

21 QUESTION: Why did you tweet this?

22 Because the hope would be that Hillary Clinton  
23 voters see this and then vote incorrectly.

24 He wanted to trick the right people. He wanted to  
25 trick the voters of Hillary Clinton.

Summation - Paulsen

860

1           Now, the defendant took the stand and said that he  
2 got his fake ads off 4Chan. You heard what 4Chan was. It was  
3 a message board where things like this could be found. That's  
4 not really in dispute here. Microchip talked about that. He  
5 also got things from 4Chan.

6           Now, when asked about this.

7           QUESTION: If you saw an idea that was important to  
8 you that you liked in the War Room, would you search other  
9 places like 4Chan to maybe find content that was like the idea  
10 shared in the War Room?

11          ANSWER: Yeah, sure, yeah. If you got an idea there  
12 like -- I mean, just like this -- in the case with the Hillary  
13 Clinton meme. Yeah, you would want to go out there and see  
14 what other content's out there.

15          This is also the sort of thing that they talked  
16 about in the groups. I've circled on these two portions of  
17 the War Room right around this time where in each case  
18 Microchip himself says: There's a whole series of 4Chan  
19 tactical nook memes like this. And, yeah, 4Chan rocked this.

20          There was a pollination between the work that the  
21 groups were doing and 4Chan.

22          Now, of course, the War Room wasn't the only place  
23 this was happening. The defendant was part of two other  
24 groups where these materials were distributed. The first one  
25 was the Micro Chat. The defendant had been a member of that

1 chat for a while, and he was removed when he got kicked off  
2 Twitter. He didn't rejoin.

3 Now, as the defendant told you on the stand, though,  
4 he was still in touch with the people in these groups, even  
5 when he got kicked off. Here's a member saying -- name  
6 Vendetta saying: He replied to me on a message on Facebook.  
7 I was showing him some of the fan art and the memes.

8 They are still talking with each other, and he told  
9 you on the stand that that was the case.

10 Now, who else was in this group? Microchip was  
11 there, of course. He told you that. HalleyBorderCol, she's  
12 the one who shared the vote by text and vote by hashtag memes  
13 to the War Room. She shares the same ones at almost the exact  
14 same time as the Micro Chat giving them to those people as  
15 well, keeping things coordinated.

16 There are people like this individual,  
17 DonaldJBismarck. He's sharing the fake ad that the defendant  
18 shared. He says: I know why Ricky was suspended. He was  
19 posting this shit and people freaked out.

20 What does DonaldJBismarck then say? He says: There  
21 are some libs who are really pissed I was tweeting these pics.

22 He's doing the same thing. Again, the groups are  
23 acting together.

24 Now we get to the Madman Group. The Madman Group  
25 you saw is two parts, part one 1 and part 2 that overlapped a

1 little bit.

2 Now, Special Agent Cunder told you about some of the  
3 individuals that had memberships in a lot of these places.  
4 Baked Alaska, the name you might remember, he was a member of  
5 the War Room but also a member of the Madman Group. There was  
6 a individual Urpochan, PaulTown, AlwaysSmooth. Those are  
7 members of the Madman Group, but also in the Micro Group, and  
8 the defendant was in all three.

9 Now, from the very beginning, he's there at the  
10 ground floor of this group. He says he's honored to be in the  
11 group. He's called the leader of the movement. We showed you  
12 a lot of this group, a lot of prologue of this group to give  
13 you a sense of the role that he was playing there. He did all  
14 the things we see in the other direct message groups; they  
15 push hashtags, they discuss strategy, he brags about his MIT  
16 ranking and all the members talk about the attention he gets.  
17 All things you've seen before.

18 Baked Alaska says: Guys, we are controlling the  
19 narrative. This is amazing.

20 Ricky\_Vaughn says: We are running Twitter right  
21 now.

22 It's much of the same things you've seen. The  
23 groups are all working to push the same messages and hack  
24 Twitter.

25 Now, the defendant is here in this group when the

1 discussions about voting disinformation begin, and it happens  
2 here earlier in the other groups.

3 In July we see 1080p, which is one of the names that  
4 you may remember as being the individual who seems to have  
5 created a lot of these images. He's talking about that he's  
6 stealing fonts from the Hillary Clinton campaign. He says: I  
7 pulled from the Hillary Clinton ad. I need to know what font  
8 this is.

9 And he's asking the group, what is it. They're  
10 giving ideas trying to guess what the right font is. I think  
11 you know why they want that.

12 Now, in late September, you see this. An individual  
13 from Urpochan -- named Urpochan sends a screenshot of  
14 something from Facebook concerning Brexit, which was a big  
15 vote that happened the earlier summer in June of 2016. It  
16 says: Save yourself a trip. You can now vote online via  
17 social media. Simply post "vote remain" on your Facebook or  
18 Twitter account with the following hashtag, EUReferendum, on  
19 23rd June between 7:00 a.m. and 10:00 p.m. Vote remain 23rd  
20 June.

21 And then it has some logos of the British labor  
22 party.

23 Urpochan says: Can we fake something like this for  
24 Hillary?

25 And then you see a long list of people texting it

1 in. The bottom, one of the members of the group says, while  
2 the defendant is in this room: Typical that all the dopey  
3 minorities fell for it.

4 This is the beginning, the defendant gets kicked off  
5 Twitter about ten days later, and he doesn't return to this  
6 group until November 9th, around about the end of the  
7 election. But it's here that many of the deceptive ads seem  
8 to have been created.

9 Now, I'm not going to go through all of them. I  
10 think you saw them during Special Agent Cunder's direct  
11 examination. There is a lot of them. This is a sample of  
12 them. They continue from mid-October all the way through the  
13 election.

14 Now, even when the defendant isn't there, though,  
15 they're paying attention to him. They talk about him when  
16 he's out. One of them says: My old timeline is Ricky  
17 avatars.

18 Urpochan, the individual who sent that Brexit photo,  
19 is confirming for others that what -- what the new Ricky  
20 Vaughn account is confirming that it's right.

21 Now, you are going to have these ads in the grand  
22 jury room, so I won't belabor them.

23 Now, the defendant hasn't yet returned to this  
24 group, but certain things are happening at the same time in  
25 all the groups. You might remember this one, the Aziz Ansari



1 meme. This is the one where he's a fairly famous comic and  
2 there was a mock-up of him saying you can vote from home.

3 It pops up in the Madman Group. One of the  
4 individuals CurveMe is showing that he's getting responses  
5 from individuals saying: Is this real?

6 It then gets sent to the Micro Chat and the War Room  
7 at about the same time.

8 Here's the one again that he re-tweeted from  
9 nia4\_trump popping up in the War Room around this time. You  
10 saw that a moment ago.

11 And of course members of the Madman Group in both  
12 the public group and in some of their side conversations are  
13 discussing when to do this.

14 Here's the Madman Group saying: Don't post it yet,  
15 though. A week or less before the election.

16 Election year that -- day that year was  
17 November 8th. A week before was November 1st.

18 1080p talking with somebody in a private  
19 conversation sends one of these fake ads and he asks: When do  
20 you think we should start posting these?

21 And the response is: November 1st.

22 Again, what day did the defendant send his first  
23 one? It's November 1st.

24 Now, you know what happened next. The defendant was  
25 banned from Twitter for sending these fake ads. 1080p in the

1 Madman Group sent an article about it to everyone and laughed  
2 about it. The defendant comes back into the Madman Group  
3 about a week later. Before then, however, he goes back into  
4 the War Room. He comes back using his new account, and you  
5 saw what happens: Sup Ricky. Ricky. Ricky in here, right?  
6 Welcome back, bro. Welcome back, Ricky. Ricky. Aww, Ricky,  
7 we love him, LOL. Can't keep a good man down.

8 He comes down to celebrate. He just got caught  
9 sending these things and his first action is to come back to  
10 the War Room and celebrate as a returning hero.

11 Now, I submit to you that the evidence that I just  
12 laid out shows beyond any reasonable doubt that a criminal  
13 conspiracy existed and the defendant was part of it. As I  
14 said before, none of this makes sense without a conspiracy.  
15 Coordination is everything that matters here. That was the  
16 whole point. But I would like to now talk about the other  
17 evidence in this case that shows why the defendant did what he  
18 did.

19 I submit that the evidence you've seen demonstrates  
20 important things in this case. It shows that they were  
21 working together. It shows that they wanted to be effective.  
22 It shows them concerned with tweaking the language to make it  
23 work better. It shows them understanding how powerful and  
24 influential the defendant was in spreading things. And for  
25 that reason, it's not a surprise that the defendant was the

1 one who got attention on CNN and places like that when he did  
2 it.

3 But I want to come back to the beginning and discuss  
4 common sense. When I started I had asked you just to look at  
5 these images and think to yourself, why would somebody do  
6 this. But of course you don't just have your common sense  
7 here. You have the evidence I just laid out for you, the  
8 evidence from the DM groups. But you have a lot more than  
9 that, too. You know a lot more about the defendant and you  
10 know a lot more about what he stood for. And I submit to you  
11 that these other things that you do know now make it crystal  
12 clear why the defendant acted the way he did.

13 This case unavoidably touches on politics. This can  
14 be an awkward mix because much of the evidence that you saw in  
15 this case is political activity that is clearly protected by  
16 the First Amendment. Defendant was a big fan of Former  
17 President Donald Trump. But that's not unusual. He shares  
18 that with approximately half the voters in this country. The  
19 defendant isn't here because of his politics. He is not and  
20 frankly cannot be prosecuted for what he believes, and that's  
21 really worth repeating. He cannot be prosecuted for what he  
22 believes. But here's the important part. What he believes is  
23 clearly relevant to how and why he acted. The judge will  
24 instruct you that conspiring to injure the right to vote is a  
25 crime and that you, as the jury, need to decide if the

1 defendant meant to do that. You are the finders of fact. The  
2 evidence of this earlier political activity and his personal  
3 opinions were presented to you to give you a window into why  
4 the defendant acted the way he did.

5 Now, the defendant took the stand and he told you he  
6 didn't put any thought into this. Or if he did have a  
7 thought, it was about undermining the Clinton campaign. I  
8 think he said both. I don't doubt that he wanted to undermine  
9 the Clinton campaign. So did Micro. He told you as much. He  
10 said that was his life's work, frankly. I'm sure that goes  
11 for everybody in those chat rooms. But the defendant also  
12 said, unlike Microchip, that he didn't want to fool anybody  
13 out of voting. Seemingly alone, among the people in those  
14 rooms, he apparently didn't want this to work.

15 I submit to you that his testimony on that point was  
16 simply not credible and it doesn't match the evidence. To the  
17 contrary, I submit that the evidence shows the defendant's  
18 motivations in doing this could not have been clearer.

19 The evidence you've seen demonstrated the  
20 defendant's beliefs about the election. First, the defendant  
21 had a clear view of who the opposition was. He wrote: If the  
22 democrats have their way, they will form a permanent majority  
23 of unmarried white women and minorities.

24 The only thing standing in Trump's path was the  
25 black voters.

1 He understood who his opposition was.

2 Second, the defendant was preoccupied with turnout.  
3 He believed that most people's opinions were not going to  
4 change. What was going to matter is who showed up to vote  
5 and, perhaps more significantly, who didn't.

6 Now, I showed you this with Special Agent Cunder,  
7 and Special Agent Cunder showed you that he said things like  
8 this all the time. Here's an example from November 2nd:  
9 Obviously we can win Pennsylvania. The key is to drive up  
10 turnout with non-college whites and limit black turnout.

11 The key was to limit black turnout. He said this  
12 lots and lots of times, including numerous times the day he  
13 sent his first tweet, November 1st. The evidence shows that  
14 this was on his mind.

15 And, third, he thought the election would be really  
16 close. He said it over and over again. And in retrospect,  
17 he was right. In a close election, a small number of votes  
18 matter. You don't have to change many people's minds or trick  
19 many people to make a difference. He told you that, too,  
20 right? Very slight changes in the electorate will lead to a  
21 Trump landslide. Small increase in white non-college voters.  
22 Small decrease in blacks.

23 He said that the day he sent out the fake ads. This  
24 is November 1st, the day that people in Madman Chat said you  
25 should send it. All that was needed was a small decrease in

1 blacks.

2           Now, this brings us to the final piece of evidence,  
3 and I don't think it's worth beating around the bush here. I  
4 submit to you that the evidence shows that the defendant would  
5 not have hesitated to undermine the voting rights of people  
6 who thought differently than him. As I said at the onset, I  
7 think your common sense might tell you that whoever sends that  
8 might think that way, but the defendant told you so. He chose  
9 these two fake ads; one black person, one Spanish speaker,  
10 both women. He had firm opinions about those groups that  
11 directly indicate where his head was at on November 1st, 2016.  
12 I will use his own words. He thought black people were  
13 gullable and he thought they were stupid. On the stand he  
14 called that an exaggeration. Nearly every time he was  
15 confronted with one of these, he said it was an exaggeration,  
16 but I don't think his testimony matched the evidence. This is  
17 a private conversation. This is with Amy Stephen, who you  
18 heard testify.

19           He said how gullable black people are, the most  
20 gullable people ever. He didn't just say it privately. He  
21 said it in tweets.

22           Here are two examples: No, you're dead wrong.  
23 Decent people are fed up with black people because they will  
24 believe anything. Meanwhile blacks have an average IQ of 85.

25           The top one was sent a year before the election.

Summation - Paulsen

871

1 The bottom one, a couple of weeks before the election. This  
2 was an opinion of his that wasn't changing.

3 He said that his side should write off the black  
4 vote and just focus on depressing their turnout. He said that  
5 they should create memes that would -- they would seed into  
6 areas where black people would read them to encourage them to  
7 #nevervote.

8 And in a statement that really couldn't be more on  
9 the nose, he said the following: Black people will believe  
10 anything they read okay Twitter, and we let them vote why?

11 The defendant testified that he didn't think anybody  
12 would fall for the fake ads, but I submit to you that this  
13 evidence shows that the defendant of all people believed that  
14 certain people -- certain people they were aimed at would have  
15 fallen for it.

16 Now, of course, the defendant said much more than  
17 this. There were other groups connected to these false  
18 advertisements that he also didn't think should vote at all.  
19 You may remember that I asked him whether he thought  
20 immigrants should vote.

21 QUESTION: What about immigrants, did you think  
22 immigrants should vote?

23 His answer was: As long as they are legal.

24 QUESTION: I mean legal immigrants.

25 And he said: Yes.

Summation - Paulsen

872

1           Now, of course that wasn't his opinion. When he  
2           said that, I don't think he knew what the information was I  
3           was about to show him. But you know what he said: Trump won  
4           natural-born citizens 50 percent to 45 percent. Naturalized  
5           citizens should not get the vote.

6           Immigrants, the children of immigrants, et cetera,  
7           cannot be trusted to vote in the interests of their new  
8           country.

9           He saw both of those and then he acknowledged it.  
10          There wasn't any point denying it. This is where his head was  
11          at when he sent this.

12          Now, in last but not least, we come to his feelings  
13          about women and voting. Here are just a few examples of them,  
14          which are just a few of many: Women are children with the  
15          right to vote.

16          It's impossible to have a functioning Government  
17          when single women and single mothers vote.

18          And he added the hashtag "repeal the 19," which I  
19          think it's fair to say means the Nineteenth Amendment of the  
20          Constitution, which gave women the vote.

21          Finally, you heard the recording. I think it's  
22          worth playing it again, it's only 45 seconds, now that you've  
23          heard him testify.

24          (Audio played; audio paused.)

25          MR. PAULSEN: Now, I submit to you that the ideas he



Summation - Paulsen

873

1 expressed in that recording weren't thoughts off the cuff.  
2 They weren't exaggerations. They weren't slips of the tongue.

3 As I said a moment ago, the defendant is not on  
4 trial for what he believes, but what he believes is highly  
5 relevant to why he acted. I asked you to consider the  
6 defendant's statements both public and private when you decide  
7 what the person who sent those who wanted to spread them far  
8 and wide was hoping to accomplish.

9 You are soon going to deliberate, and your task is  
10 to find the facts. I submit to you that the facts presented  
11 to you show that beyond a reasonable doubt that the defendant  
12 joined a conspiracy, when he did so, to injure the right to  
13 vote. Find him guilty because he is guilty.

14 THE COURT: All right. Ladies and gentlemen, I just  
15 want to make sure you get a chance to stretch your legs a  
16 little bit, so I think we will take just about a ten-minute  
17 break. Please don't talk about the case at all or look  
18 anything up. We'll see you in about ten minutes.

19 THE COURTROOM DEPUTY: All rise.

20 (Jury exits.)

21 THE COURTROOM DEPUTY: You may be seated.

22 THE COURT: Okay. Just for scheduling purposes, do  
23 you have a sense of how long you are going to be?

24 MR. FRISCH: You know, give or take about an hour.

25 THE COURT: Okay. I'm just trying to figure out --

1 I know you don't know how long your rebuttal is going to be,  
2 but we'll figure out --

3 MR. GULLOTTA: It sort of obviously depends on the  
4 defense closing, but I wouldn't imagine it's going to be much  
5 longer than 20 minutes.

6 THE COURT: Okay. All right, so we'll regroup in  
7 about ten minutes.

8 (Continued on the following page.)  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

SUMMATION - MR. FRISCH

875

1 THE COURT: Are we ready for the jury?

2 MR. PAULSEN: Yes, your Honor.

3 MR. FRISCH: Yes, your Honor.

4 (Jury enters the courtroom.)

5 THE COURTROOM DEPUTY: You may be seated.

6 THE COURT: All right. Ladies and gentlemen, we're  
7 ready to assume with the summation by Mr. Frisch.

8 Go ahead.

9 MR. FRISCH: Your Honor, thank you.

10 Ladies and gentlemen, good morning. Please allow me  
11 to begin by proposing a way that you might consider to  
12 evaluate all the information that you have. I propose that  
13 you consider thinking about this case as a triangle, three  
14 sides, three points.

15 One of the three points is the constitutional right  
16 to vote. The right to vote in the United States of America is  
17 sacred. For our rights, including the right to vote, people  
18 have fought in wars and died. For the right to vote, people  
19 have marched.

20 One of the great people in our history is a man  
21 named John Lewis. Before John Lewis was a Congressman from  
22 Georgia who marched in 1965 for the right to vote across the  
23 Edmund Pettus Bridge in Selma, Alabama. At a defining moment,  
24 a moment that would define him forever, John Lewis had the  
25 courage and the confidence and the faith to stand up to march

1 for the right to vote even though the bridge was controlled  
2 that day by law enforcement officers who awaited him on the  
3 other side. When John Lewis passed in 2020 a horse-drawn cart  
4 carried his casket across that same bridge on which he had  
5 marched 50 years before. The right to vote, one of the three  
6 points of the triangle.

7 Another point on the triangle of this case is the  
8 constitutional right to speech and expression, freedom of  
9 speech, freedom of expression. For this right as well, people  
10 have fought in wars and died. For this right as well people  
11 have marched, stood up to Governments, risen to the moment.

12 My purpose is not to defend the memes themselves.  
13 They are offensive, in bad taste, they crossed the line of  
14 decency. No registered voter was tricked, but as I said to  
15 you in opening statement, someone conceivably could have been  
16 tricked. Someone voting for the first time, it's possible.

17 It's not that speech or expression can never be a  
18 crime. It is illegal, for example, to call in a bomb threat.  
19 There has been times and places in history, it still happens  
20 in some places, where people get a knock on the door at seven  
21 in the morning, like Doug Mackey got a knock on the door in  
22 Florida January 27, 2021, and it's eight to ten law  
23 enforcement officers there to arrest you. But none of them  
24 have friendly faces like Agent Granberg, seated behind me, or  
25 Agent Cunder or Agent DeCapua. The agents and law enforcement

SUMMATION - MR. FRISCH

877

1 officers who knock on your door at seven in the morning, are  
2 not there to take you away to see a judge in West Palm Beach.

3 It's not just other times and other places in  
4 history. Today in the United States books are being banned.  
5 It's 2023, we're in the United States of America, and they are  
6 banning books, kids books, history books, poetry. It's  
7 happening today.

8 Today there are places in the United States, today,  
9 where people have, or are trying to, regulate what a school  
10 teacher can say, to make it illegal for example for a school  
11 teacher even inadvertently to reveal things about their lives.

12 And the people who show up at seven in the morning  
13 to arrest people for something expressed, they think they are  
14 right. They think it is imperative to control everything. To  
15 them, their point of view is righteous. The people who are  
16 banning books right now, kids books, history books, poetry,  
17 they think they are right. That the need for control is  
18 obvious to them, their point of view is righteous. The people  
19 trying to regulate what a school teacher says, they think it's  
20 obvious. They believe they are doing God's work.

21 Freedom of speech and expression, speaks to a better  
22 way, freedom of speech speaks to a better way.

23 The marketplace of ideas. Not a quite farmer's  
24 market on a country road on a Sunday morning, but a crowded  
25 and noisy market in the middle of a bustling place where

1 everyone is talking almost all at once. Sometimes someone  
2 shows up in the marketplace and sets up a folding table and a  
3 folding chair and they try and sell a bad idea, or something  
4 in bad taste, or offensive, or that crosses the line of  
5 decency, and is noxious and could be misleading. And what  
6 happens? No one buys it. The bad idea may generate some  
7 traffic for a while, some people may be attracted by a new  
8 voice and may be interested to see what it's all about. But  
9 they listen, they hear it, and they walk away. Because the  
10 idea is bad and no one buys it.

11 Speech regulates itself. Expression regulates  
12 itself. If you give it air, it will suffocate. No one will  
13 give it oxygen, it will die.

14 There is another way. Take the bad idea, take it to  
15 the basement, stick it in the corner, the darkest, dankest  
16 dampest corner of the basement, deny it air. And what?  
17 Happens. The bad idea festers. It becomes mold or worse, and  
18 you've got a problem.

19 Here is another way of looking at it. At some point  
20 in our lives kids break away from parents. It starts when  
21 teenagers are going to parties and dating, and continues into  
22 their 20s when they leave home and begin to live  
23 independently. All parents can do is set a good example,  
24 steer their kids in the right direction, guide them. But  
25 there comes a time when your kids are on their own and all you

1 can do is cross your fingers and pray. Almost always, it  
2 works out. Kids figure it out on their own. We figure it out  
3 on our own. Kids may not express gratitude to their parents  
4 for their example, for all the guidance, but the thanks is in  
5 knowing that your kids figured out. They are safe. They'll  
6 be okay.

7           Here too, there is another way. Take your kid, lock  
8 them in their room, don't let them out. It's a guarantee that  
9 nothing bad will happen, except you're creating a monster, a  
10 person filled with rage who will never figure out things on  
11 their own, and never truly be safe.

12           We need the freedom to figure things out for  
13 ourselves. It's like the marketplace of ideas, speech  
14 regulates itself. Expression regulates itself. If you give  
15 bad ideas oxygen, they suffocate, they die.

16           If you stifle ideas, however noxious, they simmer,  
17 they seethe, you breathe rage and resentment not resolution.

18           We all know a great example of how speech regulates  
19 itself. How expression regulates itself. Every one of us  
20 right here, right now, knows a great example of how speech  
21 regulates itself. It's this case.

22           The two memes that Mr. Mackey found on 4chan and  
23 shared on Twitter, were up maybe an hour before Professor  
24 McNees saw them and complained to Twitter. Memes like it were  
25 already viral. The third meme was a retweet, that means it

SUMMATION - MR. FRISCH

880

1 was already on the Internet when Mr. Mackey retweeted it. The  
2 media, Wired, Buzzfeed, CNN the Washington Post began covering  
3 the memes within a day. It was a national news story. Page  
4 513 of the transcript, quote, "basically every media  
5 organization out there," close quote, was covering the memes.

6 These memes were a bad idea. And the marketplace of  
7 ideas killed them almost instantaneously; think of it,  
8 instantaneously.

9 Three points on the triangle, the constitutional  
10 right to vote, the constitutional right to freedom of speech  
11 of expression. And now the third point on the triangle, the  
12 constitutional right to due process.

13 If it's the Government's idea to charge you with a  
14 crime, it's on the Government to back it up. For this right  
15 as well people have fought in wars and died.

16 At defining moments in their lives here too, people  
17 around the world with courage and confidence and faith have  
18 stood up to control, have stood up to the Government.

19 I told you in my opening statement that the  
20 Government could not prove its charge by any standard. A jury  
21 must find guilt beyond a reasonable doubt and Mr. Mackey  
22 should be afforded every constitutional right to which he's  
23 entitled. But I will now show you why this case is a  
24 nonstarter, why the Government is trying to force a square peg  
25 into a round hole.



SUMMATION - MR. FRISCH

881

1           The charge in this case is conspiracy, so let's  
2 start with Mr. Microchip. Why was it necessary for the  
3 Government to bring Mr. Microchip into this courtroom?

4           On February 4, 2021, just a week after the media  
5 publicized Mr. Mackey's arrest a week earlier, Mr. Microchip  
6 reached out to the Government. Mr. Microchip knew that  
7 Mr. Mackey was arrested and he knew what for.

8           Exhibit H, February 4, 2021: My lawyer is hard to  
9 get a hold of sometimes. I called him and left a message that  
10 you'd be contacting him. But if you can't get a hold of him  
11 after a few days let me know, and I'll ring his cell and other  
12 partners to get his attention.

13           For Mr. Microchip, this was a matter of urgency.  
14 It's not because he feared he would be arrested next, as he  
15 testified, he had already spoken to the Government once or  
16 twice and he was not arrested. It was a matter of urgency  
17 because Mr. Microchip feared that his identity would be  
18 revealed. Mr. Microchip had debts to the IRS and bankruptcy.  
19 He is self-employed and relies on customers to hire him, to  
20 have confidence that he's the right person for the job.

21           He offered his services to the FBI. The idea was  
22 his, page 563, he was willing to work for the FBI for free.

23           When Mr. Microchip met with the Government in  
24 April 2021, he knew that the Government would ask him about  
25 the memes. He had seen the media coverage of Mr. Mackey's

1 arrest. He had plenty of time to think about what he had to  
2 say, he had already consulted with a lawyer by this time.  
3 Think what you will about Mr. Microchip, but he's not stupid.  
4 April 2021 after consulting with a lawyer, three months after  
5 Mr. Mackey had been arrested for the memes, plenty of time to  
6 think about them, plenty of time to read in the media what it  
7 was all about, Mr. Microchip told the Government, beginning at  
8 538 to 545 of the transcript: That the participants in the  
9 chats were not as organized as many people believed. There  
10 was not any grand plan to stop people from voting. The focus  
11 was not on one message, it was pushing out as much content as  
12 possible.

13 It had not been his intent to put specific groups of  
14 people in a box and stop that group from voting. Not his  
15 intent. All of that is within pages 538 to 545 of the  
16 transcript.

17 So how did Mr. Microchip get from those views of the  
18 memes in April 2021 to his testimony here two years later?  
19 According to Mr. Gullotta, Mr. Microchip had just forgotten.  
20 Mr. Microchip had not recalled the time that he committed a  
21 crime until, quote, "more recently," close quote when he sat  
22 with the Government at meetings and reviewed his tweets and  
23 his messages, page 595.

24 Mr. Gullotta: Did that help refresh your  
25 recollection of your intent at the time in 2016?

SUMMATION - MR. FRISCH

883

1 Answer: That's exactly what it did, yes.

2 Mr. Gullotta: So as you sit here today, rather as  
3 you testify here today, is your memory of what you were doing  
4 you when were tweeting in 2016 better than it was in  
5 April 2021?

6 Answer: Yes, very much so.

7 So Mr. Microchip's memory is better now than it was  
8 before. How did that happen? It happened while meeting with  
9 the Government, which had the power to charge Mr. Microchip  
10 with a crime which would reveal his identity and generate the  
11 same kind of publicity as when Mr. Mackey was arrested. It  
12 happened while meeting with the Government, which had the  
13 power to prosecute him and expose him to a sentence of prison  
14 of ten years under the statute. It happened while meeting  
15 with the Government which had the power to offer him a  
16 cooperation agreement and assure his anonymity and help him  
17 qualify for a lenient sentence. All of a sudden Mr. Microchip  
18 remembers about what really happened in 2016.

19 To borrow from Mr. Paulsen, perhaps the timing of  
20 Mr. Microchip's refreshed recollection was just a coincidence.

21 Mr. Mackey never met Mr. Microchip. Before  
22 Mr. Microchip walked into this courtroom, Mr. Mackey had no  
23 idea what Mr. Microchip looked like, had never heard the sound  
24 of his voice, had no idea how Mr. Microchip presented, how he  
25 might come across in-person, face-to-face. Mr. Mackey never

SUMMATION - MR. FRISCH

884

1 had an opportunity to evaluate Mr. Microchip, to take the  
2 measure of the man. But the people seated behind me did.  
3 They know him.

4 Page 439 to 480 of the transcript:

5 Micro, have we met before?

6 Answer: We have.

7 Mr. Gullotta: Have we met multiple times?

8 Answer: Many times, yes.

9 The Government met with Mr. Microchip about 20  
10 times. Mr. Microchip knows agent Maegan Rees as Meg, Maegan.  
11 The Government and Mr. Microchip are on a first-name basis.

12 Days before the Government applied on  
13 Mr. Microchip's behalf for permission for him to testify  
14 anonymously, Mr. Microchip stopped tweeting. Exhibit P: Good  
15 night. I'm not coming back. This is my final tweet. This  
16 was just a month ago, February 22, 2023. Why did  
17 Mr. Microchip stop tweeting just days before the Government  
18 applied for permission for him to testify anonymously? Was it  
19 the hope that no one would see Mr. Microchip's most recent  
20 tweets as the date for trial approached; meaning, that you  
21 would not see them?

22 Defense Exhibit U, February 2023: I have the crazy.

23 Defense Exhibit R, February 2023: I'm now 36 hours  
24 into my Adderall marathon.

25 Defense Exhibit W, February 2023: My IQ is so high

1 right now, you have no idea.

2 Defense Exhibit S, February 2023: I drink black  
3 rifle coffee, wear a fishnet trucker hat, have a Jesus tattoo  
4 and inject testosterone.

5 Defense Exhibit X, not seven years ago in 2016,  
6 seven weeks ago, in February 2023: 3,109 crazy tweets over  
7 two weeks. What can I say, I'm insane, on pills, don't  
8 shower, can barely take care of myself, hear voices, talk to  
9 the walls, and can predict the future.

10 You saw Mr. Microchip. Mr. Gullotta introduced him  
11 to you after Mr. Gullotta and the Government had met with him  
12 about 20 times. They know who he is; Mr. Mackey did not.

13 I showed you Mr. Microchip's tweets, not  
14 Mr. Gullotta. I told you about Mr. Microchip's drug use, not  
15 Mr. Gullotta. Mr. Microchip admitted to using heroin, powder  
16 cocaine, methamphetamine, mushrooms, pain killers, steroids.  
17 According to Mr. Microchip, he used all of those drugs just  
18 within 2002/2003. According to Mr. Microchip, FBI agent  
19 Maegan Rees was incorrect in writing that Mr. Microchip said  
20 that he used drugs from 2002 or 2003 all the way until 2014.

21 Mr. Microchip testified that he had, in his words, a  
22 silent agreement with Mr. Mackey; a silent agreement, with a  
23 stranger on the Internet. But Mr. Microchip and Mr. Mackey  
24 never had a phone call, never even had a one-on-one message.  
25 There is not even a one-on-one direct message between

SUMMATION - MR. FRISCH

886

1 Mr. Microchip and Mr. Mackey. Not even one.

2 With respect, the only secret agreement in this  
3 case, the only secret agreement is Mr. Microchip's implicit  
4 understanding with the Government that he will say what the  
5 Government needs him to say so that his true name is not  
6 revealed. So that he won't lose potential clients when the  
7 world finds out that the man who authored so many tweets that  
8 crossed the line of decency is him. So he can pay off his IRS  
9 and bankruptcy debts. So he can continue to work for the FBI  
10 for free, because the FBI can protect his identity providing  
11 him, as he put it on page 564, with structure. So that the  
12 FBI will not abandon him. Because it is no exaggeration to  
13 say that Mr. Microchip needs that structure to remain whatever  
14 measure of sanity he may have left.

15 So why was it necessary to bring Mr. Microchip into  
16 this courtroom? It's because the Government charged and must  
17 prove a conspiracy. Without Mr. Microchip claiming to have  
18 had a secret agreement with Mr. Mackey, there is no proof of  
19 conspiracy. Without Mr. Microchip all of these people on the  
20 Internet in chat rooms are just people on the Internet in chat  
21 rooms.

22 Or as Mr. Microchip put it, back to Exhibit P, when  
23 he tweeted his final tweet, hoping that you folks would not  
24 his tweets from February 2023: I wish that we could have been  
25 more than e-friends, but this is the Internet after all.

SUMMATION - MR. FRISCH

887

1           If you find Mr. Microchip to be unreliable, not  
2 someone on whose word you can rely on in a matter of great  
3 importance, if you find that he is not credible, there is no  
4 case against Mr. Mackey.

5           There is no one claiming it's a conspiracy. No one  
6 saying anything about some sort of silent agreement with a  
7 stranger online.

8           Without the Government embracing Mr. Microchip and  
9 bringing him to this courtroom, all you have are charts  
10 amongst strangers on the Internet. Stuff posting. Or as  
11 Mr. Microchip told the Government in April 2021, even after he  
12 knew that Mr. Mackey had been arrested and even after he  
13 consulted with a lawyer: The participants in the chats are  
14 not as organized as many people believed. There was not any  
15 grand plan to stop people from voting. The focus was not on  
16 one message, it was pushing out as much content as possible.  
17 It had not been his intent to put specific groups of people in  
18 a box and stop that group from voting, page 538 to 545.

19           Mr. Microchip told that you his talent -- his words  
20 not mine -- is to make things weird and strange. He told you  
21 how he used bots to create the false impression, as he put it  
22 his words not mine, to create the false impression that he had  
23 something interesting to say so that people would fall for it  
24 and follow him.

25           But if you elect not to follow him, if instead you

SUMMATION - MR. FRISCH

888

1 find him to be inherently unreliable and not someone on whose  
2 word you can rely in a matter of great importance, like this  
3 trial, there is no evidence of conspiracy, just haphazard  
4 stuff posting and chats of strangers who Mr. Mackey did not  
5 know, for whose words Mr. Mackey is not responsible, and most  
6 important of which, he never saw.

7 Here is something else that Mr. Gullotta asked  
8 Mr. Microchip in the context of the memes, this is page 484.

9 Mr. Gullotta: State the obvious. Did you think  
10 that was a valid way of voting?

11 Answer: Not at all.

12 State the obvious? How contact Government ask its  
13 star witness to state the obvious that you can't vote by text  
14 or hashtag anonymously for president without proof that you're  
15 registered to vote, a citizen of the United States, old enough  
16 to vote, and all the rest. How can the Government ask its  
17 star witness to state the obvious and then allege that  
18 Mr. Mackey intended to trick voters?

19 But let's assume that Mr. Microchip more recently  
20 truly remembers what he was thinking in 2016. Let's assume  
21 that Mr. Mackey truly saw the chats that he did not see. How  
22 can Mr. Mackey be responsible for what a stranger says on the  
23 Internet where these peoples were already viral by the time he  
24 saw them?

25 Consider this, you're on a ferry with others. Are



SUMMATION - MR. FRISCH

889

1 you liable for what the other passengers are thinking because  
2 you share the same destination? Or you're a member of an  
3 online book club. Everyone may have agreed to read and may  
4 like the same book, are you responsible of someone else's  
5 interpretation of one chapter?

6 Mr. Mackey was a member of dozens of chat rooms,  
7 that's how he made the MIT list about the same level as  
8 Senator Elizabeth Warren and Cher. Fifty people can be in a  
9 chat room. Mr. Mackey was receiving and seeing hundreds of  
10 things every day, at least. Not one quiet conversation on a  
11 country road on a Sunday morning, but a crowded and noisy  
12 market in a middle of a bustling place. It was a marketplace,  
13 a place for good ideas, bad ideas, noxious issues ideas, great  
14 ideas. It was no criminal conspiracy. It was the Internet.

15 But there is more. If you have any doubt that there  
16 is no case here by any standard, let alone proof beyond a  
17 reasonable doubt, ask to see the following exhibits.

18 Government Exhibit 430-44 to 430-64. Ask to see Government  
19 Exhibits 200-124 to 200-132. They are also in evidence as  
20 200-P-1 to 200-Q-5. Ask to see Government Exhibit 410-4 to  
21 410-12. Mr. Mackey is not there.

22 Regarding 430-44 to 430-64, this is where others are  
23 work shopping the vote-to-text memes, the so-called Madman #2  
24 chat. The dates of these pages span October 5 to November 2.

25 Now look at Agent Cunder's testimony starting on

SUMMATION - MR. FRISCH

890

1 page 449. The defendant is not in this group. As of  
2 October 5, that's when he was suspended from Twitter.

3 Now look at Cunder's testimony at page 457.  
4 Mr. Mackey gets back in the room on about November 9. The  
5 Government put 430-44 to 43-64 in front of you, but Mr. Mackey  
6 has nothing to do with these.

7 Now look at Government Exhibit 200-124 to 200-132.  
8 These are one-on-one direct messages; that is, messages  
9 between two people, one-on-one, not groups. Mr. Mackey has  
10 nothing to do with it. This is the one where there is a  
11 reference to the idea about posting on November 1. Mr. Mackey  
12 is not involved in this. This is not a group. This is  
13 one-on-one.

14 It's not a coincidence. It's not a question of  
15 whether this is a coincidence or not. Mr. Mackey is not  
16 there.

17 If Ricky Vaughn is in these chat rooms where these  
18 other memes are being circulated, why doesn't he circulate  
19 those? He finds his memes on 4chan where they are already  
20 viral. And no one was tricked.

21 Mr. Gullotta questioning Mr. Samiri, page 137 of the  
22 transcript.

23 Mr. Gullotta: And with respect to the cause of the  
24 surge in inbound text messages, do you know for sure that it  
25 was the Wired Magazine or some other media publication?

SUMMATION - MR. FRISCH

891

1           Mr. Samiri: I do not.

2           Mr. Gullotta: Could it have been because somebody  
3 was sharing this on Twitter?

4           Mr. Samiri: Could very well be a result of the  
5 Twitter.

6           Could it have been? The Government flew witnesses  
7 for you to hear, for you to meet, from Wisconsin, Nebraska,  
8 North Carolina, Cape Cod, Washington DC, three from  
9 California, and two from Chicago. The Government has the list  
10 of telephone numbers. The Government has devoted unlimited  
11 resources to this case. The Government assigned the five  
12 federal employees seated behind me to work on this trial. And  
13 in addition to Agent Granberg, you met Agent DeCapua and Agent  
14 Cunder.

15           If a single registered voter was tricked, the  
16 Government would have called that registered voter as its  
17 first witness. If the crime is just a conspiracy, if that's  
18 all that matters, why call Mr. Samiri at all? Why put the  
19 numbers in evidence?

20           The Government a criminal case may not ask you to  
21 speculate about whether any registered voter was tricked based  
22 on a spreadsheet of telephone numbers without connecting up  
23 even one of those telephone numbers with even one actual  
24 registered voter who was tricked; let alone one who was  
25 tricked because of one of the memes that Mr. Mackey shared

1 when the memes were already going viral.

2 Could it have been is not proof by any standard, let  
3 alone proof beyond a reasonable doubt.

4 Mr. Mackey's avatar was a fictional character in a  
5 red MAGA cap. When he shared these memes within an hour of  
6 Professor McNeas seeing them, his avatar was the same  
7 fictional character tar but this time wearing a mask of Bane a  
8 nemesis of Batman. The Government claims the Mr. Mackey did  
9 so expecting that his followers would run with it or that they  
10 would cut and paste them without the masked avatar, or  
11 whatever the Government's theory is about pushing these  
12 hashtags that everyone would know, all these people, would  
13 know exactly what to do. Just because he shared them.

14 Those claims, with due respect, is the Government  
15 stuff posting. If it's viral, it's viral. Everyone is going  
16 to see it.

17 Mr. Mackey did not say that the memes themselves  
18 were funny or hilarious, LOLLOL. He was commenting in 2016,  
19 seven years ago on Twitter about the media claiming that the  
20 memes could be considered voter misinformation. What  
21 Mr. Gullotta acknowledges is stating the obvious. You can't  
22 vote that way.

23 Look at Defense Exhibit C. This is a comedian  
24 telling Trump voters they can vote by text. Here is why this  
25 is important. You'll have this if you want it in the jury

SUMMATION - MR. FRISCH

893

1 room. You can see that this meme was posted on November 8,  
2 2016. It's still up on March 2, 2023. It's still up as of  
3 March 2, 2023, the date is on the top. None of this should  
4 have been on Twitter, it shouldn't be there now. And none of  
5 this is funny.

6 But the Government cannot on the one hand  
7 acknowledge that it's obvious that you cannot vote by text,  
8 and simultaneously press an inference of criminal intent.

9 Did Mr. Mackey conspire to injure the right to vote?  
10 What does it mean to injure the right to vote? Can you injure  
11 the right to vote by sharing memes like this on Twitter? Is  
12 Mr. Mackey a Government official closing polling places so  
13 that minority voters have to travel hours to vote? When the  
14 closing of polling places results in waiting on lines for  
15 hours in southern states, is Mr. Mackey an elected official  
16 making it illegal to hand out bottles of water to people on  
17 line? Is Mr. Mackey an elected official who took mailboxes  
18 out of neighborhoods to frustrate voters from mailing their  
19 ballots?

20 In the face of all these types of actions, by  
21 Government officials, how can it be that Mr. Mackey a guy with  
22 a laptop in Manhattan sharing two memes that were already  
23 viral and were instantaneously shut down, how can it be that  
24 he intended to injure the right to vote when even the  
25 Government acknowledges it would be stating the obvious that

1 you cannot cast an official ballot for president anonymously,  
2 without proof of registration, and all the rest.

3 Why is this case in Brooklyn, in the Eastern  
4 District of New York? The charged crime is conspiracy, but  
5 none of the alleged conspirators had any connection to this  
6 district.

7 During the charged conspiracy, during the period  
8 September to November 2016, and that's what you have to find,  
9 not whether Mr. Mackey worked in Brooklyn before, whether the  
10 conspiracy, venue for the conspiracy, during the charged  
11 period, September to November 2016. Mr. Mackey lived and  
12 tweeted from Manhattan, which is the Southern District of New  
13 York. Neither Microchip nor any other alleged conspirator  
14 tweeted from here. If any conspirator tweeted from the  
15 Eastern District of New York during the period of the  
16 conspiracy, you can be sure the Government would have told you  
17 about it.

18 The Government called no registered voter nor anyone  
19 else who texted from this district. Nor did the Government  
20 even try to show that anyone actually texted from this  
21 district, even if they used a phone with a 718 or 516 area  
22 code.

23 The issue of venue is very much in dispute. The  
24 Government must prove that it was foreseeable to a cooperator  
25 that an act in furtherance of the charged crime, in

1 furtherance of the charged crime, during the period of the  
2 charged conspiracy would occur in this district, in  
3 furtherance of the charged crime. The only connection between  
4 this case and this district was the headquarters of the  
5 Clinton campaign in Brooklyn. But the Clinton campaign was  
6 not the object of any criminal conspiracy.

7 The Clinton campaign is Mr. Mackey's defense. He  
8 shared the memes with the intent to get media coverage and get  
9 the Clinton campaign off-message.

10 If there is venue wherever Twitter travels, then  
11 there is venue in every district around the country. So when  
12 determining whether the Government proved venue you should  
13 consider, why Brooklyn? Perhaps it's no more fair for me to  
14 tell you what the Government must have been thinking in  
15 choosing Brooklyn for this case than it is for the Government  
16 to tell you what Mr. Mackey must have been thinking when he  
17 shared the two memes.

18 What is fair? Is to show why it was not reasonably  
19 foreseeable to Mr. Mackey, or anyone else, to think about the  
20 Eastern District of New York; and why venue is just another  
21 way of showing that the Government cannot prove guilt by any  
22 standard.

23 A triangle, three sides, three points.

24 The Government is right about the right to vote.  
25 It's sacred. But so is the right to freedom of speech and

SUMMATION - MR. FRISCH

896

1 expression. And so is the right to due process. If it's the  
2 Government's idea to charge you with a crime, it's on the  
3 Government to back it up, to prove every fact necessary to  
4 constitute the crime. A square peg does not fit into a round  
5 hole. Nor does a triangle.

6 If you ever watched a trial, including this one,  
7 you've heard lawyers -- you've heard a lawyer today talk about  
8 common sense. Lawyers trying to lay claim to common sense as  
9 confirmation of their position.

10 You probably have come to realize that common sense  
11 means different things to different lawyers. I want to talk  
12 about common sense from a time just two weeks ago, before you  
13 heard from any of the lawyers in this case, when Magistrate  
14 Judge Reyes told you about this case. Did you think the trial  
15 would be about memes on Twitter? After such memes had already  
16 begun going viral, which were publicized as a national news  
17 story almost instantly, shared by a guy with a famous online  
18 Twitter avatar, who was in dozens of chat rooms and posted  
19 hundreds of things every day knowing that people were watching  
20 him? Did you think that this trial would feature a witness  
21 who boasted about a 36-hour Adderall marathon days before  
22 signing off from Twitter before the Government applied to  
23 protect him from publicly stating his name, all with the hope  
24 that no one would find his tweets, that the jury would not see  
25 them, the ones where he said: I have the crazy, I'm 36 hours



SUMMATION - MR. FRISCH

897

1 into my Adderall marathon, my IQ right now is so high you have  
2 no idea. I'm insane, on pills, hear voices, talk to the walls  
3 and can predict the future.

4 (Continued on next page.)  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

SUMMATION - MR. FRISCH

898

1 (Continuing.)

2 MR. FRISCH: When you first heard about this case,  
3 did you think the Government would show you a list of  
4 telephone numbers, rather than produce any registered voter  
5 who was actually tricked?

6 Did you think that the only true connection with  
7 Brooklyn, with this district, would be the headquarters of the  
8 Clinton campaign which is the theory of the defense, not the  
9 theory of the prosecution?

10 You may now realize why jury selection took some  
11 time. Fair and impartial jurors for this case needed to be  
12 able to put aside political beliefs, discomfort with the  
13 profanity, strong disagreement with views. You all promised  
14 Magistrate Judge Reyes that you would decide this case, decide  
15 this case just on whether the Government proved that  
16 Mr. Mackey participated in a conspiracy with others online  
17 with intent to injure the right to vote. You all promised, in  
18 substance, that you would have the courage, the confidence,  
19 and the faith to stand up and tell the Government, not guilty,  
20 if the Government failed to prove its case.

21 The Doug Mackey who sits across from you right now  
22 in 2023 is not Ricky Vaughn from 2016. The last time anyone  
23 heard from Ricky Vaughn was April 2018 when Mr. Mackey, on his  
24 own, relocated to Florida, checked himself in for two months  
25 of intensive inpatient psychotherapy followed by outpatient

1 psychotherapy. He did it on his own. He met a woman with  
2 whom he fell in love, they married, and their first child is  
3 on the way. Doug had the freedom to figure things out for  
4 himself, and he did. Doug Mackey may be a better person in  
5 2023 than he was seven years ago in 2016, but he's not  
6 perfect, nor anywhere near it. He's a work in progress. As  
7 we get older, we don't become perfect, maybe we become more  
8 accepting of our imperfections, more willing to acknowledge  
9 them, more willing to work on them. At this trial, I have not  
10 been perfect. If you think I screwed up something or should  
11 or should not have asked a particular question, please blame  
12 me, don't hold it against Doug.

13 All of the people whose words endure tell us, have  
14 taught us, continue to teach us, how to conquer bad ideas, big  
15 bad ideas, like racism and misogyny, and other bad ideas like  
16 incivility, immaturity, vulgarity. People whose good ideas  
17 and words endure like John Lewis, Christ, Gandhi, and more  
18 recent people like John Lennon, Michelle Obama. It is not a  
19 coincidence, it is not a coincidence that their message is the  
20 one that always resonates beyond the moment, that the idea  
21 that they offer has always and continues to draw, by far, by  
22 far, the biggest crowd in the marketplace. Their idea  
23 resonates and the endures in the marketplace because their  
24 idea has always been and remains and will always be the best  
25 way, the only truly effective way to conquer bad ideas. The

REBUTTAL SUMMATION - MR. GULLOTTA

900

1 courage, the confidence, the faith that truth will prevail, to  
2 stand up with courage and confidence and faith, even when it's  
3 difficult, even when it's excruciatingly difficult, to have  
4 the courage and confidence and faith to stand up to control,  
5 to permit truth to prevail because with freedom, truth always  
6 prevails.

7 THE COURT: Thank you, Mr. Frisch.

8 Is the Government ready to proceed with your  
9 rebuttal summation?

10 MR. GULLOTTA: Yes, Your Honor.

11 THE COURT: All right.

12 MR. GULLOTTA: Good afternoon, ladies and gentlemen.

13 THE COURT: Did you get a microphone? I think it's  
14 best.

15 MR. GULLOTTA: Oh, I'm sorry. We'll try that again.  
16 Good afternoon, ladies and gentlemen.

17 THE JURY: Good afternoon (unanimously).

18 MR. GULLOTTA: Certainly did not expect to hear my  
19 name that much. Not sure I would have ever expected to hear  
20 my name in the same breath as John Lewis, Jesus Christ, and  
21 Microchip, but here we are. I want to take a little bit  
22 about -- first of all, I don't want to take up too much more  
23 of your time. I know you've been sitting patiently this  
24 morning and throughout all of last week. But I do want to  
25 take a moment to respond to a few of the things the defense

1 raised in its closing.

2 First of all, let's be clear, this case is not about  
3 speech. It's not about political speech, okay. Let's look at  
4 these fake ads. There's no speech, okay. There's nothing in  
5 these that is political speech. This is false information  
6 about how to vote, the sacred right to vote, one of the sides  
7 on defense counsel's triangle. And the law permits certain  
8 restrictions on speech. Fraud, for example. You can't use  
9 words to commit fraud on her people and steal their money.  
10 Threats. You can't use your words to threaten other people.  
11 So there are some limitations on speech. This is one of them.  
12 You can't use speech, you can't use words to trick people out  
13 of their sacred right to vote. That is illegal. Imagine a  
14 country in which that is legal, where you can be tricked out  
15 of your right to vote.

16 The defense has made a point about portraying the  
17 defendant as someone just online and somehow that's supposedly  
18 less serious than a person who's on a street corner handing  
19 out flyers or putting up signs with the wrong times or  
20 locations of the polling place. We submit that it's worse.  
21 The defendant acting online put himself on 10,000 street  
22 corners across America.

23 You heard the defense argue that the defendant  
24 didn't mean to trick any voters. That was not his intent, he  
25 just wanted to rile up the campaign and maybe get some media

1 attention.

2 Ladies and gentlemen, I submit to you that the  
3 evidence shows that that simply is not believable. My  
4 colleague and Special Agent Cunder walked you through a  
5 mountain of evidence that showed you that the defendant spent  
6 month after month after month tweeting and messaging with  
7 others in the groups to find ways to reduce votes for Hillary  
8 Clinton. Reducing the votes for Hillary Clinton was his goal,  
9 not riling up the media or antagonizing the campaign. This  
10 isn't shit-posting. There's nothing in here that smears  
11 Hillary Clinton. There's nothing in here about a  
12 controversial political topic, like, war or immigration.  
13 There's nothing in here that would cause her voters to think  
14 twice about voting for her. There's nothing about these that  
15 will rile up a campaign or get media attention, unless these  
16 are attempts to trick people out of their right to vote. That  
17 is what matters and that is exactly what the defendant was  
18 trying to do.

19 The evidence showed that one of the defendant's  
20 primary purposes throughout the campaign was to reduce  
21 turnout. The defendant told you that on the stand. Microchip  
22 told you that on the stand. Turnout was a major emphasis for  
23 the defendant and the others in his group. Over and over and  
24 over, he harped on turnout, including, in the days he was  
25 posting these, and primarily, depressing turnout for Candidate

1 Clinton. Like the defendant even testified, if you don't get  
2 turnout, you lose. Those are his words. And that was his  
3 goal. If he could trick voters with these fake ads, turnout  
4 for Clinton would be lower. Are we really supposed to believe  
5 he didn't hope people would fall for this? The other group  
6 members involved all certainly seemed to want it to work. The  
7 activists you saw in the conversation with Microchip, let's  
8 see if we can make this more believable. Mr.CharlieCoker,  
9 another member of the groups, he hoped some stoners would fall  
10 for it maybe in Colorado. And Microchip unequivocally told  
11 you that he treated his hashtag to vote treat so people would  
12 fall for it, so they would be tricked.

13           So the defendant wants you to believe that out of  
14 all the people involved in this, he was the only one that did  
15 not want it to work. Yet, we know how he felt about likely  
16 Clinton voters. We know he thought women shouldn't be voting.  
17 We know he thought that black voters were more likely to  
18 support Clinton, that they were gullible, he thought they were  
19 stupid, and that they shouldn't vote. We know that he thought  
20 that naturalized citizens and the children of immigrants  
21 shouldn't vote, yet we're supposed to believe that he posted  
22 these two fake ads that clearly target those groups without  
23 the intent to trick anybody? Come on, ladies and gentlemen.  
24 Let's use our common sense. I'm sure he enjoyed getting some  
25 media attention out of this. Maybe he delighted in the panic

1 that these things caused people, but that doesn't mean that he  
2 didn't intend to trick them, to trick voters too. They hoped  
3 it would. They thought that would be funnier. It's like the  
4 arsonist who delights in watching the firefighters race to put  
5 out the fire. He enjoys seeing that, sure, but he intended  
6 the building to burn. Maybe the defendant thought this was  
7 funny in some way, but he also wanted to trick voters. Now,  
8 you heard the defendant also say he didn't think anybody could  
9 fall for this, it's so ridiculous that nobody in the entire  
10 country could fall for it.

11 Let's look at these. These look believable. They  
12 have the campaign's campaign logo, each one, the H with the  
13 arrow. They've got the font that the campaign was using,  
14 they've got the, "I'm with her" hashtag, all the colors, as  
15 Ms. Rocketto showed, the red and blue boxes. One of them even  
16 has the dash H that they used to sign text messages that were  
17 sent by Candidate Clinton. That's down here on the Spanish  
18 language one. Witnesses testified that the campaign texted  
19 supporters with information about how to vote and they used  
20 graphics like these. Ms. Morales Rocketto said these fake ads  
21 were sneaky because they were made to look like they came from  
22 the campaign. They even have disclaimers at the bottom to  
23 make them look real.

24 Nobody could fall for this? Really? Nobody in the  
25 entire country could fall for these? That's what the



1 defendant was supposedly thinking. We all maybe would have  
2 known this was a hoax when we saw it, but we also all know  
3 that one person, a friend, a family member, somebody who  
4 clicks on links that come in text messages from unknown  
5 senders or opens those strange looking e-mails, right. We all  
6 know somebody like that. That person wouldn't be tricked by  
7 something like this? Of course that person would, and the  
8 defendant was counting on it. He believed that there were  
9 certain people out there who were not as smart, who were  
10 gullible, and they just might fall for this. He hoped they  
11 would fall for this. And he knew the election was close.  
12 We've heard that today, we've heard it through this entire  
13 case. It was on a knife's edge. He didn't need 10 million  
14 people to fall for this. He hoped some would.

15           And we know the campaign worried that people would  
16 be fooled by these. Ms. Morales Rocketto said she didn't take  
17 ever issue to her supervisors, especially in the week before  
18 the elections, because everybody was so busy. It was a  
19 firehose of information. But she took these to her  
20 supervisors because these were important to her. So when you  
21 go back to the jury room to deliberate, look at these again.  
22 Look at these again and ask you, is the defendant believable  
23 when he says he thought no one in the entire country could  
24 fall for them.

25           Now, one of the reasons the defense claims that no

1 one could fall for these is because of his avatar which is in  
2 both, the profile picture with the red MAGA hat. But that  
3 argument conveniently misses the point. The defendant did not  
4 need to use his account to trick every single potential voter,  
5 because he knows as soon as he pushes this out, his followers  
6 will take it and tweet it without his image. So as these fake  
7 ads get blasted far and wide, the fake ads get further  
8 separated from his profile picture, the red hat fades back  
9 into the distance. And he knows this.

10 He knows that anyone who sees these fake ads and  
11 saves them to share elsewhere, whether on Facebook, somewhere  
12 else on Twitter, in an e-mail, in a text message, that image  
13 is going to be sent without his red hat, without his avatar.  
14 And that was the point. The avatar let's his followers know  
15 that this is a Ricky Vaughn post, this is a Ricky Vaughn  
16 tweet, take it and spread it. His loyal army, that's what  
17 they do. And don't forget that Micro testified and told you  
18 this too. His profile picture had a MAGA hat on. He texted  
19 or he tweeted a hashtag "to vote," "fake ad," with that red  
20 hat, and he told you he wasn't concerned about that because he  
21 knew it would get re-tweeted and tweeted and tweeted further,  
22 and that his image would be separated from the message. We  
23 also heard the defense argue that the defendant just didn't  
24 give these fake ads any thought which is a little bit  
25 inconsistent with some of the other defenses. It was a split

1 second, a couple of clicks. But we know that's not true. We  
2 saw a mountain of evidence of how deliberate and careful the  
3 defendant was when coming up with strategy and plans  
4 throughout the election. He was constantly planning and  
5 thinking, what works, what doesn't work. He wants you to  
6 believe that these are the only two instances, the two tweets  
7 that landed him in federal court are the only times he wasn't  
8 actually thinking about it, it was just a couple of quick  
9 clicks. But we know that he posted this one at 5:30 p.m. on  
10 November 1st, just a couple of days after it was being talked  
11 about in war room and other groups and he says he got from  
12 4Chan.

13           So we know he had to at least go from Twitter to  
14 4Chan and start searching for the kinds of images he wanted.  
15 4Chan is his supply store, I guess, for this sort of thing.  
16 He also took the time when he posted it to write, I'm with  
17 her, at the top. And we know that he took the time to find a  
18 particular version of these fake ads that suited his goals and  
19 his interest and his beliefs. Odds are not high that he  
20 logged or opened 4Chan all of a sudden the first image he saw  
21 was the one he wanted. He went and searched for it. And then  
22 he tweeted it out. And then about seven hours later, he went  
23 back and found another one that features Spanish -- that  
24 targets Spanish speaking voters and is written in Spanish. We  
25 know that this is another group of voters the defendant

1 believes should not be voting. So these are several steps  
2 taken over the course of hours, gave this more than a split  
3 second thought.

4           The defendant also argues that even if you find that  
5 he did intend to fool voters with these fake ads, he did not  
6 conspire or agree with anybody else, he did this on his own.  
7 He says he didn't see all those conversations in the War Room.  
8 He was a member of that group. He was not suspended and  
9 removed from that group during those conversations. He says  
10 he didn't see them. He does remember conversations about the  
11 celebrities with the Photoshopped hats, he remembers  
12 conversations in the group about DraftOurDaughters, he  
13 remembers conversations about the MIT rankings, he remembers  
14 conversations about converting Amy Stephen. He remembers all  
15 that; doesn't remember these. Okay.

16           That is inconsistent with the evidence. The  
17 defendant's efforts for months were coordinated with group  
18 members. As he and Micro told you, everything was more  
19 powerful when it was coordinated. Tweeting alone was like  
20 screaming into the void. So they relied on the power of the  
21 large group acting together in order to trigger Twitter's  
22 algorism to cause these things to trend. You heard Micro  
23 describe that in detail. He did this many times with many  
24 pushed hashtags, the Podesta e-mails, DraftourDaughters, the  
25 debates, all coordinated, all pushed simultaneously in unison.

1 And it was no different with these fake ads. The pattern was  
2 the same. They were talking about it in the groups, in Madman  
3 and in War Room. The defendant was in war room when  
4 HalleyBorderCol shared those two other fake ads. She shared  
5 those on October 29th, just a few days before the defendant  
6 tweeted these out. He was apart of War Room the next day when  
7 the group members starting discussing and work shopping  
8 Micro's fake ad, and he was apart of War Room when Micro  
9 shared with them his concern about the Trump supporter had  
10 been fooled by Micro's tweet. The defendant then tweeted his  
11 out a couple of days later.

12 And after he was suspended and he returned, he  
13 returned, he returned to the group to take a victory lap to  
14 receive. This is exactly how the groups functioned throughout  
15 this entire campaign cycle. He didn't have to comment on this  
16 in the group. As Micro told you, there was a silent  
17 agreement. It was expected that group members would see ideas  
18 in the chats and then go out and tweet them. Use their own  
19 versions. Micro did the same thing. HalleyBorderCol put a  
20 couple of images that were like these into War Room, but he  
21 didn't use those. He's a text guy, so he went out the next  
22 day and he tweeted in the way that he likes to which was just  
23 text. The defendant did the same thing. It was not just a  
24 coincidence that they were all doing it at the same time, just  
25 the same way they had been for months. It's because they were

1 talking about in the War Room and the defendant knew it.

2 And defense counsel said that there were ads like  
3 these already viral swirling around to give you the impression  
4 that the defendant maybe didn't see these or at least get the  
5 idea from War Room, he got it from somewhere else. But ask  
6 yourself then, if these were swirling around for some period  
7 of time before these guys all talked about it in War Room, why  
8 didn't the defendant tweet his images out much earlier? Why  
9 didn't he tweet them out on election day some time much later  
10 than when he actually did? Why did he tweet his out only  
11 after and right after the idea was shared and discussed in War  
12 Room? And why did he tweet his out only after and right after  
13 Micro did? His versions.

14 Oftentimes, the obvious answer is the correct one.  
15 It's because a bunch of his friends and followers in the  
16 groups were talking about this and he saw it and he tweeted it  
17 out. Whether he got these from 4Chan or somewhere else is not  
18 relevant. Micro told you that's how the War Room functioned,  
19 ideas why discussed and people went out and got content for  
20 those ideas in other places including 4Chan.

21 And the judge will instruct you on conspiracy. And  
22 the instructions will be lengthier than what I'm going to  
23 recite for you here, and as my colleague said, the way the  
24 judge instructs is what you should listen to. But know this,  
25 we believe the Courts' instructions will tell you, among other

1 things, a conspiracy by its very nature is almost invariably  
2 secret in both origin and execution. Therefore, it is  
3 sufficient for the Government to show that the conspirators  
4 somehow came to a mutual understanding, even if tacitly,  
5 silently, to accomplish an unlawful act by means of a joint  
6 plan or common scheme. And this is exactly what Micro told  
7 you about, a silent agreement. The group members conspired to  
8 trick people out of their right to vote and the defendant  
9 joined that conspiracy.

10 Now, other name we heard a lot today is Microchip.  
11 The defendant obviously wants to distance himself from  
12 Microchip. Understandable. Microchip has admitted what he  
13 did. He's admitted what his co-conspirators did. He's taken  
14 responsibility and he came here to tell you about it. And he  
15 may not have used his real name, but he pleaded guilty and he  
16 now has a criminal conviction. And he was prepared as he told  
17 you, to testify whether he had anonymity or not.

18 We believe the judge will instruct you to evaluate  
19 the credibility of all of the witnesses you saw and heard,  
20 including Microchip, including the defendant. You'll have to  
21 decide whether they're telling the truth. Defense has pointed  
22 out a meeting in April of 2021 to suggest that Microchip's  
23 story maybe has changed over time. Micro told you that he had  
24 not reviewed his tweets, his DMs and other Twitter records at  
25 that meeting. That was five years or so after the events at

1 issue. Much later, when he came to New York, he had an  
2 opportunity to review his tweets and his DMs, and as he  
3 testified, his memory today after having done that work is  
4 clearer than it was in April of 2021. He also plead guilty  
5 over a year ago. In order to plead guilty, he had to know  
6 what he did and explain it to a judge, and his agreement  
7 requires him to tell the truth.

8 Now, you might not like either one of them after  
9 seeing what we've seen over the past week, Microchip or the  
10 defendant, but consider their demeanors when they testified.  
11 Ask yourself, which one of them looked at ease up there  
12 testifying and which one looked like he was forcing out a  
13 rehearsed story. The defendant was tieing himself up in knots  
14 to avoid stating the obvious to try to explain how he could  
15 have wanted all of these group of people to not have the right  
16 to vote, but somehow he was not using these to intentionally  
17 trick them out of that right to vote. Ask yourself who was  
18 telling the truth. Micro told you the clear intent was to  
19 fool voters and the defendant denied that. And now, when I  
20 said to state the obvious, just to clarify the record, to  
21 Micro, Microchip had already testified that it was their  
22 intent to fool voters and trick them out of their right to  
23 vote. So we were stating the obvious because he had just  
24 testified to it.

25 The defense has made a point about the lack of



1 witnesses testifying that they were tricked out of their right  
2 to vote. First of all, it's irrelevant if the conspiracy is  
3 successful. That is a distraction. If you find beyond a  
4 reasonable doubt that the defendant intended to trick voters  
5 and he conspired with others to do it, then the Government has  
6 met its burden. He's guilty of the crime charged. Also, we  
7 don't know who was and who wasn't tricked, right. And that's  
8 because the good guys acted to put measures in place to foil  
9 the scheme. Ms. Rocketto and Mr. Cotler and other  
10 professionals at the campaign, Mr. Chesley and Mr. Samiri at  
11 the shortcut companies, and some folks in the press responded  
12 to try to prevent the defendant and his co-conspirators from  
13 succeeding. They set up warning messages and they shared them  
14 widely so anyone who saw these and believed this they could  
15 text their vote would know it's a hoax. The safeguards were  
16 put in place as the defendant was launching these ads into the  
17 Twittersphere. In other words, the fire department was on the  
18 scene putting out the fires when the defendant lit his match,  
19 but that doesn't excuse what he did.

20 Mr. Samiri testified that he was concerned in part  
21 because the way technology was advancing so quickly, it would  
22 not be out of the realm of possibility that a person would  
23 think this is possible. He was also concerned that his  
24 company would be associated with this hoax. Professor McNees  
25 was concerned that people would fall for this. We know that

1 thousands of people texted Hillary, the short code Hillary to  
2 59925 after the defendant posted his tweet. And what is the  
3 more likely reason that those people texted Hillary to 59925?  
4 Because they read an article somewhere that said do not do  
5 this, it's a hoax, you can't vote this way, so they would have  
6 to think -- they would have to realize that they're sending  
7 their personal cell phone number to something they've just  
8 been told is a hoax, or because they saw these glossy real  
9 looking campaign ads that told them they could vote that way.  
10 Regardless, whether anyone was tricked into texting the number  
11 because if the defendant's post does not matter. What matters  
12 is the defendant's intent.

13 Ladies and gentlemen, before I conclude, let's be  
14 clear, the Government bears the burden to prove beyond a  
15 reasonable doubt each element of the offense charged, and we  
16 embrace that burden. Throughout this trial, the evidence made  
17 it clear that the defendant and other members of his Twitter  
18 groups wanted to cut down the number of votes for Hillary  
19 Clinton. They tried a number of ways. They tried by smearing  
20 Candidate Clinton with embarrassing or controversial  
21 information. That's legal. That's not what this case is  
22 about. They tried to scare her voters into thinking they or  
23 their daughter or somebody else might get drafted into a war  
24 if Candidate Clinton were to win. That is legal. You may not  
25 like it, but that is legal, and that is not why we are here.

## PROCEEDINGS

915

1 And then they tried to trick some voters out of their right to  
2 cast their votes altogether, and that went over the line, that  
3 was criminal, and that is what this case is about.

4 So we ask to you look at the evidence with clear  
5 eyes and use your common sense and you will arrive at the only  
6 conclusion that makes sense, that the defendant and his  
7 co-conspirators agreed to try to trick some voters out of  
8 their right to vote. We ask you to return the only verdict  
9 consistent with the evidence. It's a verdict of guilty.

10 Thank you.

11 THE COURT: Thank you. All right, folks.

12 The next stage of the proceedings will be my charge  
13 on the law. I'm going to give you your lunch break before we  
14 do that. It's not terribly lengthy, but I really want to make  
15 sure that you're, you know, not hungry or tired. So we'll see  
16 you at 2:00 o'clock.

17 Please do not talk about anything having to do with  
18 the case or permit anyone to approach you about the case.  
19 Don't look anything up. But have a nice lunch. I'll see you  
20 at 2:00 o'clock. Thank you.

21 THE COURTROOM DEPUTY: All rise.

22 (Jury exits the courtroom.)

23 THE COURTROOM DEPUTY: You may be seated.

24 THE COURT: All right. Anything before we break for  
25 lunch?

PROCEEDINGS

916

1 MR. BUFORD: No, Your Honor.

2 THE COURT: I know you're shaking your head, I just  
3 want the record to be clear.

4 MR. FRISCH: I said no.

5 THE COURT: Okay. All right. See you at  
6 2:00 o'clock.

7 (A luncheon recess was taken.)

8

9 (Continued on the following page.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 A F T E R N O O N S E S S I O N

2 (In open court; jury not present.)

3 THE COURT: Hi. Everyone can sit down.

4 All right. Anything before we bring in the jurors?

5 MR. BUFORD: Your Honor, just one minor application.

6 Would the Court consider, in addition to the

7 instructions reminding the jury of its instruction with

8 respect to permitting one witness to testify anonymously?

9 THE COURT: Don't I have that in there?

10 MR. BUFORD: You have it with respect to anonymity

11 being a protected right under the First Amendment, but

12 specifically when Microchip testified, the Court gave an

13 instruction that, you know, sometimes the Court will allow a

14 witness to testify anonymously --

15 THE COURT: Oh, just to repeat that instruction?

16 MR. BUFORD: Yes.

17 THE COURT: You don't have any problem with that, do

18 you? I mean, I ordinarily probably would have put it in when

19 I -- I've done it before. It's true.

20 MR. FRISCH: You already gave the instruction.

21 THE COURT: All right. But I don't see any harm in

22 repeating it. Where do you have in mind adding that?

23 MR. BUFORD: Your Honor, I would consider either --

24 THE COURT: Credibility?

25 MR. BUFORD: Yes. Or after the cooperating witness

1 instruction, Your Honor.

2 THE COURT: Hold on for just one second.

3 All right. What I said before was that the Court  
4 permitted the witnesses to testify anonymously, which is not  
5 an unusual practice, especially when there's media attention  
6 in a case, and you shouldn't be concerned with why the Court  
7 is keeping the witness's identity confidential.

8 I think probably in the credibility section is where  
9 this belongs, just so it doesn't -- anything else before we  
10 bring in the jury?

11 MR. BUFORD: Not from the Government, Your Honor.

12 MR. FRISCH: Your Honor, is the language that you  
13 are using on that issue the same language you used during the  
14 course of the trial?

15 THE COURT: Yes. Which was -- well, this is exactly  
16 what it is. It had an introductory sentence that he was  
17 testifying using his online name, and that the Court is  
18 permitting the witness to testify anonymously. The practice  
19 is not unusual, especially when there is media attention in a  
20 case, and that you should not be concerned with why the Court  
21 is keeping the witness's identity confidential. And then it  
22 said: You should evaluate the witness's testimony -- well, I  
23 didn't actually say this last line because he's a cooperator.  
24 I didn't say that you should evaluate him the way you evaluate  
25 any other witness. So I just said that the Court was keeping

1 the witness's identity confidential and they weren't to  
2 speculate why.

3 MR. FRISCH: I object to that in light of now that  
4 we have his testimony on the record, I think -- I think Your  
5 Honor now has a better sense of -- this gentleman having  
6 testified, I think the issue is now in different focus,  
7 perhaps. Perhaps the Court would consider saying the  
8 Government is -- the Court is permitting it on the  
9 Government's application or something like that.

10 THE COURT: I won't say that because the reason why  
11 the witness was, as far as I know, was permitted to testify  
12 anonymously because he faced threats, and that's the nature of  
13 the case.

14 Now, obviously, testimony about that didn't come  
15 out, and you attributed a reason for him testifying  
16 anonymously, but this is just saying that it's not an unusual  
17 practice.

18 MR. FRISCH: I understand Your Honor's position. It  
19 may not be the most -- the biggest issue in this case. At the  
20 same time, I think -- for the record, I respect Your Honor's  
21 ruling, however, I think under the circumstances of this case,  
22 it's highly unusual, and I don't believe he's been threatened.  
23 The Government fears threats.

24 THE COURT: What do you mean, you think it's highly  
25 unusual?

Charge of the Court

920

1 MR. FRISCH: I don't think it's highly unusual --  
2 I'm sorry, I think it is highly unusual for a witness like  
3 this to be testifying anonymously. I think that is unusual.

4 THE COURT: Well, I mean, I think that there are --  
5 Judge Garaufis was the person who made the decision, but I  
6 think that the record was made before him that given the --  
7 you know, the circumstances surrounding the case, that there  
8 was a danger to him to be -- to being publicly identified, and  
9 it's a concern that I've addressed recently in this case, and  
10 so I don't think it's unusual at all.

11 Anything else you want to say about this?

12 MR. BUFORD: No, Your Honor.

13 THE COURT: Okay. All right.

14 I also want to make it clear that it's the Court's  
15 decision. I mean, I think it's appropriate that it's the  
16 Court's decision. I'm not saying that -- I mean, I'm saying  
17 that, but because that's accurate.

18 All right. Let's get the jury, please.

19 THE COURTROOM DEPUTY: All rise.

20 (Jury enters.)

21 THE COURTROOM DEPUTY: You may be seated.

22 THE COURT: All right, ladies and gentlemen, welcome  
23 back.

24 We are now in the stage of the trial where I  
25 instruct you on the law. You have heard all of the evidence



Charge of the Court

921

1 in the case, as well as the lawyers' arguments and you've paid  
2 close attention to this case, and I ask you to continue to do  
3 that as I give you these instructions.

4 Now, the instructions that I'm going to give you are  
5 divided into three parts.

6 First, I'm going to talk to you about the general  
7 rules that define and govern your duties as jurors in a  
8 criminal case.

9 In the second portion of the charge, I will give you  
10 instructions about the crime that's charged in this case and  
11 the elements that the Government must prove beyond a  
12 reasonable doubt.

13 Finally, I will give you some general rules about  
14 the process of your deliberations.

15 Let me begin by reminding you of your role as jurors  
16 and my role as the judge.

17 As I mentioned in my opening instructions, your duty  
18 is to find the facts from all the evidence in the case. You  
19 are the sole judges of the facts and it is for you, and you  
20 alone, to determine the weight to give to the evidence to  
21 resolve any conflicts in the evidence, and to draw those  
22 inferences that you believe are reasonable and warranted from  
23 the evidence.

24 My job is to instruct you on the law. You must  
25 follow the law as I give it to you and apply the law to the

## Charge of the Court

922

1 facts as you find them to be. It is your sworn obligation to  
2 follow the law as I give it to you whether you agree with it  
3 or not. You should not be concerned about the wisdom of any  
4 rule of law that I describe for you regardless of any opinion  
5 that you might have about what the law is, or what you think  
6 it should be, you would violate your oaths as jurors if you  
7 were to base your verdict on anything other than the law as I  
8 define it for you.

9           If the lawyers had said something about the law that  
10 is different from my instructions, you must ignore it and be  
11 guided by only what I instruct you on the law. You should not  
12 single out any one instruction, but consider the instructions  
13 as a whole. Since it is your job and not mine to determine  
14 what the facts are, I have not expressed or implied an opinion  
15 about how you should decide the facts of the case. You should  
16 not conclude from anything that I have said or done during  
17 this trial, including in these instructions that I have any  
18 opinion about the facts of the case or the merits of the case.  
19 For example, please don't assume that I have an opinion about  
20 the case because I might have asked a witness a question.  
21 When I did that, if I did it, I did it only to make something  
22 clearer or to move the trial along.

23           In determining whether the defendant is guilty or  
24 not guilty on any of these charges, don't consider anything  
25 that I have done. I don't have any view about the defendant's

1 guilt or innocence. It is your function to determine the  
2 facts, not mine.

3           The fact that the Government is prosecuting this  
4 case in the name of the United States of America should not  
5 affect your evaluation of the evidence and the facts before  
6 you. The Government is not entitled to greater consideration  
7 than the defendant. By the same token, it is entitled to no  
8 less consideration. All parties, Government or individuals,  
9 stand as equals in this court and are entitled to equal  
10 consideration. Neither the Government nor the defendant is  
11 entitled to any sympathy or favor.

12           It is your responsibility to decide the facts with  
13 complete fairness and impartiality and without any bias or  
14 prejudice or sympathy for any party you must perform your duty  
15 as a juror with complete fairness and impartiality. You must  
16 consider the evidence carefully and impartially, follow the  
17 law as I give it to you, and reach a just verdict regardless  
18 of the consequences. It would be improper for you to consider  
19 any feelings that you might have about the defendant's race,  
20 religion, national origin, ethnic background, occupation,  
21 gender, age, or political views. Each person is entitled to  
22 the presumption of innocence and the Government has the same  
23 burden of proof with every defendant.

24           It would also be improper for you to allow any  
25 feelings you have about the nature of the crime charged to

1 influence your decision-making process.

2           The indictment is the document that the Government  
3 uses to give the defendant notice of the charge against him  
4 and to bring him before the Court. The indictment is an  
5 accusation and nothing more. It is not evidence, and it is  
6 entitled to no weight in your determination of the facts.

7           The defendant has pled not guilty to the indictment.  
8 The burden is on the Government to prove the defendant guilty  
9 beyond a reasonable doubt. This burden never shifts to the  
10 defendant. He does not have to prove that he is innocent. He  
11 doesn't have to present any evidence at all. If the  
12 Government does not meet its burden of proving the defendant's  
13 guilt beyond a reasonable doubt, you must reach a verdict of  
14 not guilty.

15           The defendant is presumed to be innocent of the  
16 charges against him. The presumption of innocence alone,  
17 unless overcome by proof beyond a reasonable doubt, is  
18 sufficient to reach a verdict of not guilty. The defendant is  
19 presumed innocent unless and until you decide unanimously that  
20 the Government has met its burden and proven him guilty beyond  
21 a reasonable doubt. This presumption was with the defendant  
22 when the trial began and remains with him now and will  
23 continue into your deliberations unless and until you are  
24 convinced that the Government has proved his guilt beyond a  
25 reasonable doubt.

## Charge of the Court

925

1           So what is a "reasonable doubt"? A reasonable doubt  
2 is a doubt that's based on reason and common sense. It's the  
3 kind of doubt that would cause a reasonable person to hesitate  
4 to rely on it and act on it in a matter of importance in his  
5 or her personal life.

6           A reasonable doubt is not a caprice or a whim; it is  
7 not speculation or suspicion. It is not an excuse to avoid an  
8 unpleasant duty. Proof beyond a reasonable doubt is not proof  
9 beyond all doubt. Rather, it is proof that is so convincing  
10 that a reasonable person based on that proof would not  
11 hesitate to draw the conclusion offered by the Government.

12           If after fair and impartial consideration of the all  
13 of the evidence you have heard in this trial you have a  
14 reasonable doubt, it is your duty to acquit the defendant.

15           On the other hand, if after fair and impartial  
16 consideration of all of the evidence you have heard, you are  
17 satisfied of the defendant's guilt beyond a reasonable doubt,  
18 you should vote to convict.

19           Under your oath as jurors, you are not permitted to  
20 consider the question of the punishment that the defendant  
21 will receive if he is convicted. It is my duty, and my duty  
22 alone, to impose the sentence if the defendant is convicted.  
23 It is your job to weigh the evidence in the case and determine  
24 whether the defendant is guilty beyond a reasonable doubt  
25 solely on the basis of the evidence.

## Charge of the Court

926

1 I'm now going to speak to you about what evidence is  
2 and how you should consider it.

3 You must determine the facts in this case based only  
4 on the evidence that was presented and on the inferences that  
5 can reasonably be drawn from that evidence. The evidence  
6 includes testimony from the witnesses on direct and  
7 cross-examination, the physical exhibits that were admitted  
8 into evidence, and the stipulations between the parties. As I  
9 have mentioned a couple times, the stipulation is an agreement  
10 between parties that certain facts are true, and you should  
11 regard those agreed facts as true.

12 There are things that are not evidence and you  
13 should disregard them in deciding what the facts are in this  
14 case.

15 First, the arguments and statements by the lawyers,  
16 including opening and closing arguments are not evidence. If  
17 a lawyer said something about the evidence in an opening  
18 statement or in summation that conflicts with your  
19 recollection of the evidence, it is your recollection that  
20 governs.

21 Second, questions that a lawyer asked a witness that  
22 the witness did not answer are not evidence.

23 Third, objections to questions or to exhibits are  
24 not evidence. Also, any statements the lawyers made when they  
25 objected are not evidence. As I mentioned in opening, my

1 opening instructions to you, the lawyers have a duty and a  
2 right to object and ask for a sidebar question -- sidebar  
3 conference if they believe that a question is improper or if  
4 evidence should not be received. Don't be influenced by any  
5 objections or by any of my rulings on the objections. If I  
6 sustain an objection, ignore the question. If I overruled an  
7 objection, treat the answer like any other answer.

8 Fourth, testimony or exhibits that I have stricken  
9 from the record and told you to disregard are not evidence.

10 And anything that you may -- the final thing -- the  
11 fifth thing is that anything that you might have seen or heard  
12 outside this courtroom is not evidence. Your verdict must be  
13 based solely upon the evidence presented in this trial or the  
14 lack of evidence. In this regard, I have instructed you not  
15 to read any newspaper articles or watch any television or  
16 radio -- listen to the radio news or look up anything on the  
17 internet or read anything on the internet. That instruction  
18 continues to the very end of the case until after you have  
19 reached a verdict -- until after you've reached a verdict and  
20 rendered a verdict.

21 Now, there are generally two types of evidence,  
22 direct evidence and circumstantial evidence. You may use both  
23 kinds of evidence in reaching your verdict in this case.

24 Direct evidence is testimony from a witness about  
25 something the witness knows from his or her own senses,

1 something the witness has seen, felt, tasted, touched, or  
2 heard.

3 Circumstantial evidence is proof of a chain of  
4 circumstances that point to the existence or nonexistence of  
5 certain facts. In this courthouse, we use a very simple  
6 example to describe circumstantial evidence.

7 Let's suppose that you came to court on a day when  
8 the weather was clear and sunny and dry, but after you've been  
9 sitting in this windowless courtroom for a while, you see  
10 someone coming in wearing a wet raincoat and another person  
11 shaking a wet umbrella. Now, you can't look outside the  
12 courtroom and see for yourself if it's raining, and so you  
13 have no direct evidence that it's raining. But it would be  
14 reasonable and logical for you to infer from the circumstances  
15 that I describe, the wet coat and the dripping umbrella, that  
16 it rained outside while you were sitting in court. That's all  
17 there is to circumstantial evidence. It's on the basis of  
18 reason, experience, and common sense you may infer the  
19 existence or nonexistence of a fact from one or more  
20 established facts. Inferences are conclusions that reason and  
21 common sense lead you to draw from the facts that were  
22 established by the evidence. Use your common sense in drawing  
23 inferences. An inference is not a suspicion or a guess. It's  
24 a reason, a logical decision, to conclude that a disputed fact  
25 exists based on the existence of another fact that you know



1 exists. So while you are considering the evidence that was  
2 presented to you, you are permitted to draw reasonable  
3 inferences from the proven facts in this trial.

4 Our law makes no distinction between the weight to  
5 be given to direct evidence or to circumstantial evidence.  
6 One kind of evidence is not better than the other. You must  
7 base your verdict on a reasonable assessment of all of the  
8 evidence in the case. I remind you that whether based upon  
9 direct or circumstantial evidence or upon logical, reasonable  
10 inferences drawn from the evidence, you must be convinced of  
11 the defendant's guilt beyond a reasonable doubt before you may  
12 convict.

13 Now, the Government has presented exhibits in the  
14 form of charts or summaries. These were shown to you in order  
15 to save time to make certain evidence more meaningful and to  
16 help you in considering the evidence. It's for you to decide  
17 whether the charts or summaries correctly present the  
18 information that's included in the testimony and in the  
19 exhibits on which they were based. Because these charts and  
20 summaries were admitted into evidence, you may consider them  
21 as evidence, but you are to give them no greater consideration  
22 than you would give to the evidence upon which they were  
23 based.

24 Now, you've seen evidence of instances in which  
25 Twitter did or did not suspend users for violating the terms

## Charge of the Court

930

1 of service. Twitter is a private company. Neither its  
2 internal rules nor its administration of these rules bear on  
3 whether the users' conduct, including the defendant's,  
4 violated the law.

5 Now, I think I spoke to you about this a little bit  
6 in my opening instructions, but as the sole judges of the  
7 facts, you are also the sole judges of the witnesses'  
8 credibility and the weight that their testimony deserves.  
9 There is no magical formula that you use to judge a witness's  
10 testimony. You all make these decisions in your own lives,  
11 and the standard you use in your own lives to make these  
12 decisions are the same standards that you should use here.  
13 Your determination of a witness's credibility depends upon the  
14 impression that the witness made to you on -- the impression  
15 that the witness made on you as to whether the witness was  
16 telling the truth or giving you an accurate version of what  
17 occurred. One of the best tools you have in making these  
18 decisions is your common sense. In making your decision, you  
19 can consider any number of factors, including the following:

20 Did the witness have the opportunity to see, hear,  
21 and know about the events that the witness described?

22 Could the witness remember and describe these things  
23 accurately?

24 How did the witness testify? Was the witness honest  
25 and forthright? Did it seem like the witness was hiding

Charge of the Court

931

1 something? Was the witness evasive? Did the witness testify  
2 differently on direct examination than on cross-examination?

3 Was the witnesses' testimony reasonable in light of  
4 all the other evidence in the case?

5 Did the witness have a possible interest in the  
6 outcome of the case?

7 Was the witness's testimony contradicted by the  
8 witness's other testimony by what the witness said or did on a  
9 previous occasion, or by other witnesses' testimony, or by  
10 other evidence?

11 Now, inconsistencies or discrepancies in a witness's  
12 testimony or between or among the testimony of different  
13 witnesses may or may not cause you to discredit a witness's  
14 testimony. If there is a discrepancy or an inconsistency, you  
15 should consider whether it relates to an important fact or  
16 whether it is an unimportant detail, whether it was  
17 intentional, or whether it was a result of an innocent  
18 mistake, and whether the witness had a common sense  
19 explanation for the inconsistency. If you determine that a  
20 witness has purposely lied to you, that is important and you  
21 should consider it seriously.

22 A witness's testimony may be discredited or  
23 impeached by showing that the witness previously made  
24 statements that are inconsistent with the witness's testimony  
25 in front of you. It is your job to determine the weight, if

1 any, to be given to all or part of a witness's testimony who  
2 has been impeached by prior inconsistent statements. You  
3 should first determine whether the prior statement was  
4 inconsistent. If you find that the witness made an  
5 inconsistent statement, you may consider that fact in  
6 assessing the witness's credibility. You may consider whether  
7 you believe the witness and accept the witness's testimony  
8 even though there was a prior inconsistent statement. In  
9 making this determination, you should consider the importance  
10 of the subject matter of the statement. If you were to find  
11 that the matter is relatively unimportant, you may decide not  
12 to attach much significance to the inconsistency.

13 If you find that the matter is important, you may  
14 decide that it casts substantial doubt on the witness's  
15 credibility. If you find that a witness's testimony on the  
16 stand is false in whole or in part, you may disregard the  
17 particular part of the testimony that you find to be false or  
18 you may disregard the witness's entire testimony.

19 Now, the Court permitted the witness Microsoft [sic]  
20 to testify anonymously.

21 As I mentioned, I think before he began his  
22 testimony, this is not an unusual practice, especially when  
23 there is media attention in a case, and you should not be  
24 concerned with why the Court is keeping this witness's  
25 identity confidential.

1           THE COURT: Now you heard expert witness testimony  
2 from FBI Special Agent Joel DeCapua, who is a cyber crimes  
3 expert, who testified about cellular data infrastructure in  
4 the New York City area.

5           An expert witness is allowed to express an opinion  
6 about which the witness has special knowledge or training.  
7 Ordinarily witnesses are limited to testify about matters of  
8 fact and the rules of evidence don't permit the witness to  
9 testify about their opinions. Expert witnesses are the  
10 exception to this rule. If specialized knowledge will help  
11 you as jurors understand the evidence, or decide a disputed  
12 fact, a witness who is qualified as an expert by knowledge,  
13 skill, experience, training or education may testify about  
14 that evidence or facts in the form of an opinion.

15           You should consider the expert testimony you heard  
16 in this case and give it the weight you think it deserves. In  
17 weighing expert testimony you may consider the expert's  
18 qualifications, the expert witness's opinion, the expert  
19 witness's demeanor and reasons for testifying, as well as all  
20 of the other considerations that ordinarily apply when you are  
21 assessing a witness's credibility.

22           If you decide that the expert witness's opinion is  
23 not based on sufficient education and experience, or that the  
24 reasons the witness gave in support of the opinion are not  
25 sound, or that the expert's opinion is outweighed by other

1 evidence, you may disregard the opinion entirely. In short,  
2 the expert witness is the same as any other witness. You  
3 should not accept the testimony of an expert witness merely  
4 because the witness is an expert or merely because I permitted  
5 the witness to testify as an expert about his or her opinion;  
6 nor should you substitute it for your own reason judgment and  
7 common sense. The determination of the facts in this case  
8 rests solely on you.

9           You also heard the testimony of law enforcement  
10 agents. You should evaluate these witnesses' testimony in the  
11 same way that you evaluate the testimony of any other witness.  
12 The fact that a witness is a law enforcement agent does not  
13 mean that you should give the witness's testimony any more or  
14 less consideration than any other witness. You should use all  
15 of the tests of credibility that I just discussed with you to  
16 evaluate the law enforcement witness's testimony. It is up to  
17 you to decide, after reviewing the evidence, whether to accept  
18 the testimony of law enforcement witnesses and to give that  
19 testimony the weight you believe it deserves.

20           You did hear the testimony of the witness Microchip,  
21 who testified pursuant to a cooperation agreement with the  
22 Government after he pleaded guilty to a federal crime. The  
23 Government argues, as it is permitted to do, that it must take  
24 the witness as it finds him. The law permits the Government  
25 to use the testimony of alleged accomplices and

1 co-conspirators. Indeed, it is the law in federal court that  
2 the testimony of an accomplice or co-conspirator may be enough  
3 in and of itself for conviction if the jury finds that the  
4 testimony establishes guilt beyond a reasonable doubt.

5           The cooperation agreement was between Microchip and  
6 the Government and not with the Court. Any promises made were  
7 not formal orders of immunity from the Court but were arranged  
8 directly between the witness and the Government. You must  
9 scrutinize the testimony of a cooperating witness with great  
10 care and view it with particular caution when you decide how  
11 much of that testimony to believe.

12           I've already given you instructions on evaluating a  
13 witness's credibility and those instruction as apply here.  
14 There are a few additional considerations that are specific to  
15 cooperating witnesses that you may wish to consider in your  
16 deliberations.

17           You should ask yourselves whether the witness would  
18 benefit more by lying or by telling the truth. Was his  
19 testimony made up in any way because he believed or hoped that  
20 he would somehow receive favorable treatment by testifying  
21 falsely. Or did he believe that his interests would be best  
22 served by testifying truthfully. If you believe that the  
23 testimony was motivated by hopes of personal gain, was the  
24 motivation one that would cause him to lie or was it one that  
25 would cause him to tell the truth?

1           You have also heard testimony that Microchip was  
2 promised that if he provides substantial assistance to the  
3 Government and testifies truthfully, completely and fully, the  
4 Government will present to the sentencing Court what is called  
5 a 5K1.1 letter. The 5K1.1 letter sets forth the cooperating  
6 witness' criminal acts as well as the substantial assistance  
7 that the witness had provided. I instruct you that the 5K1.1  
8 letter does not guarantee the cooperating witness a lower  
9 sentence. This is because the sentencing Court may, but is  
10 not required, to take the 5K1.1 letter into account when  
11 imposing sentence on the cooperating witness. The Court has  
12 discretion, whether or not there are is a 5K1.1 letter, to  
13 impose any reasonable sentence the Court deems appropriate up  
14 to the statutory maximum. The final determination as to the  
15 sentence to be imposed rests with the Court, not with the  
16 Government.

17           In sum, you should look at all of the evidence in  
18 deciding what credence and what weight, if any, you want to  
19 give to the cooperating witness.

20           The defendant in a criminal case never has any duty  
21 to testify or to come forward with any evidence. This is  
22 because, as I have told you, the burden of proof beyond a  
23 reasonable doubt remains on the Government at all times. And  
24 the defendant is presumed innocent.

25           In this case, the defendant did testify and was



1 subject to cross-examination, like any other witness. You  
2 should examine and evaluate his testimony just as you would  
3 the testimony of any witness within an interest in the outcome  
4 of the case.

5           The parties have stipulated to certain facts in this  
6 case. As I told you before, that's just an agreement among  
7 the parties that a certain fact is true. When the attorneys  
8 on both sides stipulate and agree to the existence of a fact,  
9 you must accept the stipulation as evidence and regard that  
10 fact as proved.

11           There was testimony at this trial that attorneys  
12 interviewed witnesses when preparing for the trial and during  
13 the trial. You must not draw any unfavorable inference from  
14 that fact. On the contrary, lawyers are obliged to prepare  
15 their case as thoroughly as possible. And in discharging that  
16 responsibility, it is appropriate that they interview  
17 witnesses in preparation for trial and during the trial.

18           There are witnesses whose names you've heard during  
19 the course of the trial but did not testify. I instruct you  
20 that each party had an equal opportunity or lack of  
21 opportunity to call any of these witnesses. For that reason  
22 you should not draw any inferences or reach any conclusions  
23 about what the witnesses would have testified to had they been  
24 called. Their absence should not affect your judgment in any  
25 way.

1 Remember that a defendant in a criminal case does  
2 not have any burden to call witnesses or produce evidence.

3 Although the Government bears the burden of proof  
4 and although a reasonable doubt can arise from a lack of  
5 evidence, the law does not require that the Government to  
6 prove its case through any particular means. Law enforcement  
7 techniques are not your concern. You are not to speculate as  
8 to why the Government used the techniques that it did, or why  
9 it did not use other techniques. Your concern is to determine  
10 whether, based on all of the evidence presented in this case,  
11 the Government has proved the defendant's guilt beyond a  
12 reasonable doubt.

13 Now you've also heard evidence during the trial  
14 about some investigative techniques and methods of collecting  
15 evidence. I instruct you that any evidence that was presented  
16 to you, was obtained legally and you can consider it. The  
17 methods used to collect evidence or to investigate should not  
18 enter into your deliberations in any respect.

19 There has also been evidence that other people were  
20 involved in the crime charged in the Indictment. These  
21 individuals are not on trial before you, and they are not your  
22 concern. You should not speculate about why these people are  
23 not on trial before you. The fact that these individuals are  
24 not on trial before you, should not control or influence your  
25 verdict as to the defendant who is on trial. The only issue

1 in this case is whether the Government has proven the charge  
2 against this defendant beyond a reasonable doubt. Your  
3 verdict should be based solely on the evidence or lack of  
4 evidence as to this defendant in accordance with my  
5 instructions, and without regard as to whether other people's  
6 will guilt has or has not been proven.

7 Now, among the exhibits that came into evidence  
8 there are some exhibits that have been redacted, that means  
9 that a portion of the document was taken out. The redacted  
10 portions of exhibits are not evidence, and you should only  
11 concern yourself with the part of the exhibit that's been ad  
12 mitted into evidence. You should not speculate as to why the  
13 exhibit was redacted or about what might be in any of the  
14 redacted portions of the exhibits.

15 You have heard testimony and seen some exhibits  
16 related to what might be the defendant's political views.  
17 Treat this evidence with caution. This evidence alone is not  
18 a basis to find the defendant guilty of the offense charged in  
19 the Indictment. You may consider it however for limited  
20 purposes, including considering the context in which the  
21 statements were made, what the defendant intended in making  
22 the statements, and his expectations regarding the affects of  
23 the statements. You cannot find the defendant guilty because  
24 you disagree with his political views or find them  
25 distasteful.

1           The First Amendment to the United States  
2 constitution protects the right to publish anonymously. The  
3 defendant's general exercise of that right is therefore not in  
4 and of itself evidence of guilt. You may consider evidence  
5 about the defendant's efforts to remain anonymous only to the  
6 extent that you find that the defendant's anonymity furthered  
7 the charged conspiracy or to assess any defenses the defendant  
8 has raised.

9           The next portion of the charge is the portion in  
10 which I'll explain to you the elements of the crime charged in  
11 the Indictment that the Government must prove beyond a  
12 reasonable doubt.

13           The Indictment charges that conduct occurred in or  
14 about and between certain dates. The Government does not have  
15 to establish the exact date of an offense, of an alleged  
16 offense, or that the defendant committed the crime charged  
17 throughout the entire period. It is sufficient if the  
18 evidence establishes beyond a reasonable doubt that the  
19 offense was committed during any part of the charged time  
20 frame. The law only requires substantial similarity between  
21 the dates alleged in the Indictment and the dates established  
22 by the testimony and exhibits.

23           Although the Indictment charges that the statute was  
24 violated by acts that are connected by the word and, it is  
25 sufficient if the evidence establishes violations of the

1 statute by any one of the acts charged. Of course, this must  
2 be proved beyond a reasonable doubt.

3 Venue refers to the location of the charged crime.  
4 The Indictment alleges that the crime charged occurred, in  
5 part, in this judicial district, which is the Eastern District  
6 of New York. This district encompasses the boroughs of  
7 Brooklyn, Queens, and Staten Island, as well as Nassau and  
8 Suffolk Counties on Long Island. And the waters within  
9 Manhattan and the Bronx, which include the waters surrounding  
10 the island of Manhattan that separate Manhattan from the outer  
11 boroughs of New York and from the state of New Jersey. As  
12 well as the air space above the district or the waters in the  
13 district.

14 The island of Manhattan itself is in the Southern  
15 District of New York.

16 To establish a venue for a crime in this district,  
17 the Government must prove that some act in furtherance of the  
18 crime happened in the Eastern District of New York. This  
19 means that with respect to the crime charged, even if other  
20 acts were committed outside this district, or if the crime was  
21 completed elsewhere, venue is established in the Eastern  
22 District of New York so long as some act in furtherance of the  
23 crime took place in this district. Indeed, a defendant need  
24 not personally have been present in this district for venue to  
25 be proper. Venue turns on whether any part of the crime or

1 any act in furtherance of the offense was committed in this  
2 district. Venue is proper in a district where the defendant  
3 intentionally or knowingly causes an act in furtherance of the  
4 charged offense to occur, or where it is foreseeable that such  
5 an act would occur in the district.

6 In a conspiracy, such as the one charged here,  
7 actions of co-conspirators as well as actions caused by  
8 co-conspirators may be sufficient to confer venue if it was  
9 reasonably foreseeable to the defendant that the acts would  
10 occur in the Eastern District of New York.

11 In determining whether some act in furtherance of  
12 the crime you are considering occurred in the Eastern District  
13 of New York, you may consider a number of things. Venue can  
14 be conferred based on physical presence or conduct, and  
15 passing through a district including through or over waters is  
16 sufficient to confer venue. Venue can be based on electronic  
17 impulses, including electronic communications or data  
18 transfers, passing through a district. Venue lies in any  
19 district where electronic communications are sent or received,  
20 and any district through which electronic communications are  
21 routed. Venue can also lie where a telephonic communication  
22 in furtherance of a crime was made and where it was received.

23 The Government need not prove all of these bases of  
24 venue; any one is sufficient. It is up to you to determine  
25 whether the Government has proved them.

1           So in this case you may conclude venue is proper if  
2           you find that the evidence established any of the following:  
3           Either the defendant or a co-conspirator or an innocent  
4           non-conspirator caused to act by members of the conspiracy  
5           tweeted an allegedly deceptive image into the Eastern District  
6           of New York in furtherance of the alleged scheme; provided  
7           that, if tweeted by someone other than the defendant, that act  
8           was reasonably foreseeable to the defendant.

9           Second, the allegedly deceptive images sent by the  
10          defendant in furtherance of the conspiracy had passed through  
11          the Eastern District of New York as they were transmitted to  
12          Twitter's servers and beyond.

13          Or if the deceptive images sent by others in  
14          furtherance of the conspiracy had foreseeably passed through  
15          the Eastern District of New York as they were transmitted to  
16          Twitter's servers and beyond.

17          Or that the allegedly deceptive images were viewed  
18          in the Eastern District of New York and that such viewing,  
19          even if innocent, was a foreseeable overt act furthering the  
20          ends of the conspiracy.

21          While the Government's burden as to everything else  
22          in the case is proof beyond a reasonable doubt, a standard  
23          that I've already explained to you, the Government must prove  
24          venue by the lesser standard, a preponderance of the evidence.  
25          To establish a fact by preponderance of evidence, means to

1 prove the fact is more likely true than not. A preponderance  
2 of the evidence means the greater weight of the evidence, both  
3 direct and circumstantial.

4 Now you will also hear me use the word intentionally  
5 during these instructions, so I want to define that term  
6 before I go to the individual charge. As a general rule, the  
7 law holds individuals accountable only for the conduct they  
8 undertook intentionally. Thus, before you can find the  
9 defendant guilty of the crime charged, you must be satisfied  
10 that he was acting intentionally. The issue of intent  
11 requires you to make a determination about a defendant's state  
12 of mind, something that can rarely be proved directly. A wise  
13 and careful consideration of all the circumstances before you;  
14 however, may permit you to make a determination as to the  
15 defendant's state of mind.

16 Indeed, in your every day affairs you are frequently  
17 called upon to determine a person's state of mind from his  
18 words and actions in any given circumstances. And that's what  
19 you're asked to do here.

20 I have admitted into evidence other people's acts  
21 and statements because these acts and statements were  
22 committed by people whom the Government charges were also  
23 confederates or co-conspirators of the defendant. The reason  
24 for permitting this evidence has to do with the nature of the  
25 crime of conspiracy. A conspiracy is often referred to as a



1 partnership in crime. Thus, as in other types of  
2 partnerships, when people enter into a conspiracy to  
3 accomplish an unlawful end, each and every member becomes an  
4 agent for the other conspirators in carrying out the  
5 conspiracy. Accordingly, the reasonably foreseeable acts,  
6 declarations, statements and omissions of any member of the  
7 conspiracy and in furtherance of the common purpose of the  
8 conspiracy, are deemed under the law to be the acts of all of  
9 the members, and all of the members are responsible for such  
10 acts, declarations, statements and omissions. If you find  
11 beyond a reasonable doubt that the defendant was a member of  
12 the conspiracy charged in the Indictment, then any acts done  
13 or any statements made in furtherance of the conspiracy by  
14 persons that you find have been members of that conspiracy,  
15 may be considered against the defendant. This is so even if  
16 the acts were done and the statements were made in the  
17 defendant's absence and without his knowledge.

18           The Indictment charges that from on or about and  
19 between September 2016 and November 2016, both dates being  
20 approximate and inclusive, within the Eastern District of New  
21 York and elsewhere, the defendant, Douglass Mackey, also known  
22 as Ricky Vaughn, together with others conspired to injure,  
23 oppress, threaten and intimidate one or more persons in the  
24 free exercise and enjoyment of a right and privilege secured  
25 to them by the constitution and laws of the United States; to

1 wit, the right to vote.

2           The relevant statute is Section 241 of Title 18 of  
3 the United States Code, which is entitled conspiracy against  
4 rights. It provides in relevant part: If two or more persons  
5 conspire to injure, oppress, threaten or intimidate any person  
6 in the state, territory, Commonwealth, possession or district  
7 in the free exercise or enjoyment of any right or privilege  
8 secured to him by the constitution or laws of the United  
9 States or because of his having exercised the same, they shall  
10 be punished.

11           I instruct you that the right of qualified voters to  
12 vote in a federal election is secured to them by the  
13 constitution and the laws of the United States.

14           In order to establish that the defendant entered  
15 into a conspiracy against rights, as charged in the  
16 Indictment, the Government must prove each of the following  
17 elements beyond a reasonable doubt.

18           First, that two or more persons entered into the  
19 particular unlawful agreement charged.

20           Second, that the defendant knowingly and  
21 intentionally became a member of the conspiracy. I'm going to  
22 describe each one of those elements in more detail.

23           The first element requires that the Government prove  
24 that at least two conspirators had a meeting of the minds, and  
25 that they agreed to work together to accomplish the object of

1 the charged conspiracy. A conspiracy is an agreement by two  
2 or more people to accomplish some unlawful purpose. It is  
3 sometimes referred to as a criminal partnership. The  
4 conspirators do not have to agree on every detail of their  
5 venture, but they must agree on the essential nature of their  
6 plan to achieve a specified unlawful act. Nor does the  
7 Government have to prove that each member of the conspiracy  
8 knew all the other members of the conspiracy, or was aware of  
9 their roles.

10 A conspiracy is in and of itself a crime. The  
11 Government does not have to prove that the ultimate objectives  
12 of the conspiracy were successfully accomplished. It is  
13 enough if the Government has proved that two or more people,  
14 one of whom is the defendant, in any way expressly or  
15 impliedly came to a common understanding to commit an unlawful  
16 act.

17 The United States Congress has deemed it appropriate  
18 to make conspiracy a separate crime. That is because  
19 collective criminal activity poses a greater threat to the  
20 public safety and welfare than individual conduct, and  
21 increases the likelihood of success of a particular criminal  
22 venture.

23 To establish a conspiracy the Government is not  
24 required to prove that the conspirators sat around a table and  
25 entered into a solemn contract, orally or in writing, stating

1 that they formed a conspiracy to violate the law, setting  
2 forth details of the plans the means by which the unlawful  
3 project is to be carried out or the part to be played by each  
4 conspirator. Common sense suggests that when people do in  
5 fact undertake to conspiracy, much is left to an unexpressed  
6 understanding. A conspiracy by its very nature is almost  
7 invariably secret, in both origin and execution; therefore, it  
8 is sufficient for the Government to show that the conspirators  
9 somehow came to a mutual understanding, even if passively, to  
10 accomplish an unlawful act by means a joint plan or common  
11 scheme.

12 Because conspiracy is usually characterized by  
13 secrecy, you may infer its existence from the circumstances  
14 and the conduct of the parties and others involved. The  
15 agreement of the parties may be implicit in a working  
16 relationship between them that has never been articulated, but  
17 nevertheless amounts to a joint criminal effort. You may  
18 consider the actions and statements of any purported  
19 co-conspirators in deciding whether a common design existed to  
20 act together for the accomplishment of an unlawful purpose.

21 In short, you may consider all the evidence before  
22 you and the reasonable inferences that may be drawn from this  
23 evidence.

24 The second element requires that the Government  
25 prove that the defendant became a member of the conspiracy

1 with knowledge of its criminal goal and intending by his  
2 actions to help it succeed. That is, you must determine  
3 whether he knowingly and intentionally became a participant in  
4 the conspiracy. A defendant generally acts knowingly if he  
5 acts purposely and voluntarily and not because of ignorance,  
6 mistake, accident or carelessness. A defendant generally acts  
7 intentionally when the defendant's conduct is the product of  
8 the defendant's conscious objective, rather than the product  
9 of mistake or accident. The defendant's knowledge is a matter  
10 of inference from the facts proved.

11 To become a member of the conspiracy, the defendant  
12 did not have to know the identities of every member, nor need  
13 he have been apprised of all of their activities. The  
14 defendant need not have been fully informed of all of the  
15 details or the scope of the conspiracy in order to justify an  
16 inference of knowledge on his part.

17 The defendant need not have joined in all of the  
18 conspiracy's unlawful objectives. A conspirator's guilt is  
19 not measured by the extent or duration of his participation.  
20 In other words, the law does not require the defendant to play  
21 an equal role in the conspiracy as another defendant or  
22 conspirator.

23 (Continued on next page.)  
24  
25

1 (Continuing.)

2 THE COURT: Some conspirators may play major roles,  
3 while others may play minor roles. Each member may perform  
4 separate and distinct acts and may perform them at different  
5 times. Even a single act maybe sufficient to draw the  
6 defendant within the circle of a conspiracy. A person who  
7 intentionally joins an existing conspiracy is charged with the  
8 same responsibility as if he or she had been one of the  
9 originators or instigators of the conspiracy.

10 Thus, if you find that the conspiracy existed, and  
11 you further find that the defendant participated in it  
12 knowingly and intentionally, the extent or degree of his  
13 participation is not material. The Government also need not  
14 prove that the defendant actually committed the unlawful act  
15 or acts charged as the objective of the conspiracy. Instead,  
16 the Government must prove beyond a reasonable doubt, only that  
17 the purpose of the conspiracy was to commit an act or acts  
18 that are unlawful.

19 I want to caution you, however, that the defendant's  
20 mere presence at the scene of criminal activities or at  
21 locations frequented by criminals does not by itself make him  
22 a member of the conspiracy. Similarly, mere association with  
23 one or more members of the conspiracy does not automatically  
24 make the defendant a member. A person may know or be friendly  
25 with a criminal without being a criminal himself or herself.

1 Indeed, a person may be a criminal without being a member of a  
2 charged conspiracy. Mere similarity of contact or the fact  
3 that individuals may have assembled together and discussed  
4 common aims and interests, does not necessarily establish  
5 proof of the existence of a conspiracy.

6 I further caution you that mere knowledge or  
7 acquiescence without participation in the unlawful plan is not  
8 sufficient. The fact that the defendant's acts merely  
9 happened to further the purposes or objectives of the  
10 conspiracy, without his knowledge, does not make the defendant  
11 a member. More is required under the law. What is necessary  
12 is that the defendant must have participated with knowledge of  
13 at least some of the purposes or objectives of the conspiracy,  
14 and with the intention of aiding in the accomplishment of  
15 those unlawful ends. Thus, while someone who is present  
16 during a conspiracy is not necessarily a member, you may find  
17 that the defendant knowingly and willfully became and was a  
18 member of a conspiracy if you find that his presence was  
19 purposeful. That is, the defendant's presence on one or more  
20 occasions was intended to serve the purposes of the  
21 conspiracy.

22 The indictment charges that the objective of the  
23 charged conspiracy was to injure, oppress, threaten, or  
24 intimidate one or more persons in the free exercise and  
25 enjoyment of their right to vote. The Government must,

1 therefore, prove beyond a reasonable doubt that the defendant  
2 knowingly and intentionally joined the conspiracy with the  
3 intent to further that objective. In this case, the  
4 Government has alleged that the object of the conspiracy was  
5 specifically to injure one or more persons in the free  
6 exercise and enjoyment of their right to vote. I instruct you  
7 that the statute covers conduct intended to obstruct, hinder,  
8 prevent, frustrate, make difficult or impossible, or  
9 indirectly, rather than directly assault free exercise of the  
10 right.

11 For example, hinder, is defined as to make slow or  
12 difficult, the process of, to hamper, to hold back, to  
13 prevent, to check. It does not require the possibility of  
14 physical force or physical harm. Thus, conduct that makes the  
15 right to vote more difficult or in some way prevents voters  
16 from exercising their right to vote can constitute an injury  
17 within the meaning of the law.

18 I further instruct you that the Government must  
19 prove that the intended victims of the conspiracy were present  
20 in any state, district, or territory of the United States.  
21 Although, I again, remind you that the Government does not  
22 have to prove that the conspiracy actually succeeded in  
23 accomplishing its unlawful goal for you to find the defendant  
24 guilty.

25 The key inquiry is whether the defendant joined the



1 conspiracy charged in the indictment with knowledge of the  
2 basic aim and purpose of the unlawful agreement and with the  
3 intent to help it succeed. If, upon considering all of the  
4 evidence, direct and circumstantial, you are not satisfied  
5 beyond a reasonable doubt that the defendant knowingly became  
6 a member of the conspiracy charged in the indictment, then you  
7 cannot find him guilty. On the other hand, upon considering  
8 all of the evidence, if you find that the Government has met  
9 its burden of proving that the defendant knowingly became a  
10 member of the conspiracy charged in the indictment, then you  
11 should render a verdict of guilty.

12 All right. I'm now in the final part of the  
13 instructions. In a few minutes, you will begin your  
14 deliberations. I'm going to give you some general  
15 instructions regarding your deliberations. Just a reminder  
16 that nothing that I've had during the course of these  
17 instructions is meant to suggest in any way what I think your  
18 verdict should be. That is entirely for you to decide.

19 In order for your deliberations to proceed in an  
20 orderly way, you must have a foreperson. It's the custom in  
21 this courthouse that Juror Number 1 acts as the foreperson.  
22 But if when you begin your deliberations, you decide that you  
23 want to select another foreperson, you may do that. The  
24 foreperson will be responsible for signing all communications  
25 to the Court and for handing them to the deputy marshal during

1 your deliberations. Of course, the foreperson's vote is  
2 entitled to no greater weight than the vote of any other  
3 juror.

4           Your duty is to reach a fair conclusion from the law  
5 as I have given it to you, and the evidence presented in this  
6 case. This duty is important. When you are in the jury room,  
7 listen to one another and discuss the evidence and issues in  
8 the case among yourselves. It's the duty of each of you as  
9 jurors to consult with one another and to deliberate with a  
10 view towards reaching an agreement on a verdict, if you can do  
11 that without violating your individual judgment. No one  
12 should surrender conscientious convictions of what the truth  
13 is and what the weight and effect of the evidence is. Each of  
14 you must decide the case for yourself and not merely acquiesce  
15 in the conclusion of your fellow jurors. You should examine  
16 the issues and the evidence before you with candor and  
17 frankness, and with proper deference and respect to the  
18 opinions of your fellow jurors.

19           You should not hesitate to reconsider your opinions  
20 from time to time and to change them if you become convinced  
21 that you were wrong. However, do not surrender an honest  
22 conviction about the weight and effect of the evidence simply  
23 to reach a verdict.

24           The decision that you reach must be unanimous. Each  
25 of you must agree.

1           Now, as I've expressed throughout the trial, but  
2       it's slightly different here, it is very important that you  
3       not communicate with anyone outside the jury room about your  
4       deliberations or about anything related to this case. You may  
5       not use an electronic device or media like a telephone, cell  
6       phone, smart phone, smart watch, tablet, computer, the  
7       internet, any text or instant messages service, blog, or  
8       social networking site to communicate with anyone regarding  
9       any information about this case or to conduct any research or  
10      do any kind of investigation about the case until after I  
11      accept your verdict.

12           There is only one exception to this rule. If you  
13      have a question for me, or if it becomes necessary for you to  
14      communicate with me, then you may send a note through the  
15      deputy marshal that your foreperson signs. No members of the  
16      jury should attempt to communicate with me except by a signed  
17      note, and I will never communicate with any members of the  
18      jury on any subject touching upon the merits of the case other  
19      than in writing or here in open court.

20           If during your deliberations, you have questions  
21      about the law or if you want further explanation as to the  
22      law, you may send me a note. You will also be permitted to  
23      review any of the exhibits admitted at the trial, as well as  
24      transcripts of the testimony.

25           The Government must prove the defendant's guilt

1 defendant as we have already discussed. If you find that the  
2 Government meets this burden, then your verdict should be  
3 guilty. If the Government does not meet its burden, your  
4 verdict should be not guilty. To reach a verdict, you must be  
5 unanimous.

6 I have prepared a verdict form for you that may help  
7 in your deliberations. The form is in no way intended to tell  
8 you how to deliberate or to decide the facts of the case. The  
9 foreperson should use a check mark in the appropriate space  
10 for guilty or not guilty. The foreperson should also put his  
11 or her initials and the date besides the check mark on the  
12 verdict form. Again, the verdict form must reflect your  
13 unanimous verdict.

14 As we talked about, each of you is entitled to your  
15 opinion, however, you should consult with one another and  
16 reach an agreement based solely and wholly on the evidence if  
17 you can do that without contradicting your individual  
18 judgment. Each you must decide the case for yourself after  
19 consideration with your fellow jurors. However, if after  
20 carefully considering all of the evidence and the arguments of  
21 your fellow jurors, your view is different from your fellow  
22 jurors, you should not change your opinion just because you  
23 are outnumbered or because it's late. Your final vote must  
24 reflect your conviction as to how the issues should be  
25 decided. When you have reached a verdict, simply send me a

1 note that's signed by your foreperson that says you have  
2 reached a verdict. Do not write down on the note what the  
3 verdict is. You should never give a numerical count of where  
4 the jury stands in its deliberations in any communications  
5 with the Court.

6 The Government, the defendant, and the Court rely  
7 upon you to give full and conscientious deliberation and  
8 consideration to the issues and the evidence before you. By  
9 doing so, you carry out your oaths as jurors to render a true  
10 verdict.

11 I'm going to ask you to just sit tight for just a  
12 minute. I want to talk to the lawyers to see if there's  
13 anything I've forgotten or anything further that we need to  
14 discuss. I'll be back with you in just a moment. If I could  
15 have the court reporter come over with the parties.

16 (Continued on the next page.)

17 (Sidebar conference.)  
18  
19  
20  
21  
22  
23  
24  
25

SIDEBAR CONFERENCE

958

1 (The following occurred at sidebar.)

2 THE COURT: All right. Any exceptions by the  
3 Government or requests, additional request?

4 MR. PAULSEN: No, Your Honor. No additional  
5 requests.

6 THE COURT: Mr. Frisch?

7 MR. FRISCH: No.

8 THE COURT: All right. I guess send them back.

9 MR. FRISCH: Can I ask Your Honor what your practice  
10 is with regard to alternates?

11 THE COURT: We keep them in a different place. I  
12 don't excuse them, but they won't be deliberating.

13 MR. FRISCH: I see.

14 (End of sidebar conference.)

15 (Continued on the next page.)

16

17

18

19

20

21

22

23

24

25

PROCEEDINGS

959

1 (In open court; Jury present.)

2 THE COURT: Would the U.S. Marshal please come  
3 forward.

4 THE COURTROOM DEPUTY: Raise your right hand for me,  
5 please.

6 (Whereupon, the marshal was sworn.)

7 THE MARSHAL: I do.

8 THE COURTROOM DEPUTY: Thank you.

9 THE COURT: All right. Ladies and gentlemen, I'm  
10 going to ask the 12 regular jurors to go with the marshal to  
11 begin your deliberations, and the alternates will be in a  
12 different place.

13 Go ahead.

14 THE COURTROOM DEPUTY: All rise.

15 (The jury retired to commence deliberations at  
16 3:20 p.m.)

17 (Jury exits.)

18 THE COURT: All right. Everybody can have a seat.

19 I know you all spoke with Ms. Greene about getting  
20 the exhibits together.

21 Are those all in a way that can be sent back to the  
22 jury?

23 MR. FRISCH: Not yet. We're still reviewing the  
24 Government's binder of its exhibits. It won't take too much  
25 longer.

PROCEEDINGS

960

1 THE COURT: Okay. And then is it necessary for the  
2 jurors to have a laptop to look at anything?

3 MR. BUFORD: Your Honor, the only exhibit I think  
4 would be the audio recording, the 45 seconds --

5 THE COURT: Right. Do you have something that they  
6 can --

7 MR. BUFORD: We don't have a laptop. I suppose we  
8 could put it on a media so if they do have a laptop, it could  
9 be put on there.

10 THE COURT: Well, when Ms. Greene gets back.  
11 Usually the Government provides that. I think we can do it,  
12 though. I probably should have mentioned it before, I just  
13 didn't think it was necessary. So when she gets back, we'll  
14 see about that because they have to have a way to listen to  
15 that. I'm not going to bring them in here to do it because  
16 they won't be able to talk about it. So hold on for one  
17 second.

18 (Pause in the proceedings.)

19 THE COURT: All right. I hope this is coming along  
20 expeditiously. To be fair, it would have been before this  
21 point, but that's all right. And Ms. Greene will get a laptop  
22 from our -- they're getting the computer, from IT. Thank you.

23 (Pause in the proceedings.)

24 THE COURT: Is any part of it ready to go back?

25 MR. PAULSEN: Your Honor, I think it's almost



1 entirely ready. Some redactions didn't go all the way  
2 through.

3 THE COURT: Okay. That's fine.

4 MR. PAULSEN: So we want to make sure they're  
5 fully --

6 THE COURT: Okay.

7 MR. PAULSEN: Your Honor, we redacted the transcript  
8 with all the sidebars out, so it's ready to go.

9 THE COURT: Okay. Good. Mr. Frisch, did you look  
10 at the transcripts that they've taken everything out?

11 MR. FRISCH: I haven't. I'm going to start doing  
12 that as soon as I can.

13 MR. PAULSEN: Your Honor, the exhibits are ready.

14 THE COURT: All right. As soon as -- is that right,  
15 Mr. Frisch?

16 MR. FRISCH: It is.

17 THE COURT: All right. As soon as Ms. Greene gets  
18 back here with the laptop -- do you have whatever it is  
19 that --

20 MR. PAULSEN: The hard drive?

21 THE COURT: Yes.

22 MR. PAULSEN: Yes, it's in there, as well.

23 THE COURT: All right. She should be here any  
24 minute.

25 MR. PAULSEN: Thank you, Your Honor.

PROCEEDINGS

962

1 THE COURT: I think we'll have the exhibits taken  
2 back and as soon as Ms. Greene gets here with the laptop,  
3 we'll take that back separately.

4 MR. PAULSEN: That's fine, Your Honor. Thank you.

5 THE COURT: Oh, here she is. They're all set.

6 All right. So I guess I don't have to tell you to  
7 not go that far, and then, you know, when we get a note, we'll  
8 let you know.

9 THE COURTROOM DEPUTY: Leave your contact.

10 THE COURT: Oh, yeah. Just leave cell phone numbers  
11 and things.

12 (Off the record.)

13 (Time noted: 5:35 p.m.)

14 THE COURTROOM DEPUTY: All rise.

15 THE COURT: Hi. Everybody can sit down. All right.  
16 It's about 25 before 6:00, so I think it's time to excuse the  
17 jurors for today. So unless anybody has anything they want to  
18 raise, I'll bring them in and excuse them.

19 MR. FRISCH: No.

20 MR. PAULSEN: No, Your Honor.

21 THE COURT: Okay.

22 THE COURTROOM DEPUTY: All rise.

23 (Jury enters the courtroom.)

24 THE COURTROOM DEPUTY: You may be seated.

25 THE COURT: All right, ladies and gentlemen. It's

## PROCEEDINGS

963

1 about 20 minutes before 6:00. It's been a long day, so I'm  
2 going to have you stop your deliberations for the evening, and  
3 we'll resume tomorrow morning.

4           You can only deliberate when all 12 of you are in  
5 the jury room alone together without anyone else there. So  
6 obviously, you're not going to talk about the case anymore  
7 tonight, even amongst yourself. You'll resume that tomorrow.  
8 Once again, please do not look anything up on the internet,  
9 don't discuss the case with anybody, and don't permit anyone  
10 to approach you to discuss the case with you. But do have a  
11 good night, and you can get started again tomorrow morning at  
12 9:30. Obviously, remember we can't start until you all are  
13 here. All right. Have a great night. Thanks so much.

14           THE COURTROOM DEPUTY: All rise.

15           (Jury exits the courtroom.)

16           THE COURT: Okay. Everybody can have a seat.

17           All right. Anything before we break for the night  
18 from the Government?

19           MR. PAULSEN: No, Your Honor.

20           THE COURT: Mr. Frisch?

21           MR. FRISCH: No.

22           THE COURT: All right. I'll see everybody tomorrow.

23 5:41 p.m.

24                           \*       \*       \*       \*       \*

25           (Proceedings adjourned at 5:41 p.m. to resume on  
March 28, 2023 at 9:30 a.m.)